

| | | | | | |
|--|--|--|--------------------------|-----------------------------|--|
| SOLICITATION, OFFER AND AWARD | | THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) | | PAGE OF A-1 PAGES | |
| 2. CONTRACT NO. | 3. SOLICITATION NO. DE-RP05-010R22864 | 4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP) | 5. DATE ISSUED 4/5/01 | 6. REQUISITION/PURCHASE NO. | |
| ISSUED BY U.S. Department of Energy Oak Ridge Operations Office P.O. Box 2001 200 Administration Road ATTN: Source Evaluation Panel, Room G023 Oak Ridge, TN 37831 | | 8. ADDRESS OFFER TO (if other than Item 7) | | | |

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 7 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in Federal Office Building, 200 Administration Rd., Oak Ridge, TN until 4:00 PM local time 5/7/01

(Hour)

(Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

| | | |
|---------------------------|-------------------------|---|
| 10. FOR INFORMATION CALL: | A. NAME Karen Shears | B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) 865-241-9204 |
|---------------------------|-------------------------|---|

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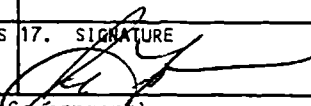
OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.


| | | | | | | | | |
|---|------------------|---------|-------------------|---------|------------------|---|---------------|---|
| 13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52-232-8) | 10 CALENDAR DAYS | % | 20 CALENDAR DAYS | % | 30 CALENDAR DAYS | % | CALENDAR DAYS | % |
| 14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated: | AMENDMENT NO. | DATE | AMENDMENT NO. | DATE | | | | |
| | 001 | 4/18/01 | | | | | | |
| | 002 | 4/27/01 | DISCUSSION LETTER | 8/31/01 | | | | |
| | 003 | 5/04/01 | TIME EXTENSION | 9/12/01 | | | | |

| | |
|--|---|
| 15A. NAME AND ADDRESS OF OFFEROR NOLA COMPUTER SERVICES 3535 CANAL STREET NEW ORLEANS. LA 70119 | 16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print) RICHARD JACKSON VICE PRESIDENT, BUSINESS DEVELOPMENT |
|--|---|

| | | | |
|--|---|---|---------------------------|
| 15B. TELEPHONE NO. (Include area code) (504) 488-1111 | 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENCE FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/> | 17. SIGNATURE  | 18. OFFER DATE 9/24/01 |
|--|---|---|---------------------------|

AWARD (To be completed by Government)

| | | |
|---|---|--|
| 19. ACCEPTED AS TO ITEMS NUMBERED | 20. AMOUNT | 21. ACCOUNTING AND APPROPRIATION KX0310203 \$27,090 KX0101200 \$3,870 EW1001209 \$12,040 |
| 22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)() <input type="checkbox"/> 41 U.S.C. 253(c)() | 23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) | |
| 24. ADMINISTERED BY (if other than Item 7) CODE | 25. PAYMENT WILL BE MADE BY CODE | |

| | | |
|---|--|------------------------------|
| 26. NAME OF CONTRACTING OFFICER (Type or print) Beverly J. Harness | 27. UNITED STATES OF AMERICA  (Signature of Contracting Officer) | 28. AWARD DATE 11-01-2001 |
|---|--|------------------------------|

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540-01-152-806433-134 STANDARD FORM 33 (REV. 4-85)

PREVIOUS EDITION NOT USABLE Prescribed by GSA

GAR (48 CFR) 53.214(c)

GPO: 1987 0 - 181-247 (40254)

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PART I - THE SCHEDULE

SECTION B SUPPLIES OR SERVICES AND PRICES/COSTS

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B.2..... ORO B13 PRICE SCHEDULE (TIME-AND-MATERIAL AND LABOR-HOUR) (MAY 1997) (Revised)

B.3..... ORO B18 MINIMUM/MAXIMUM REQUIREMENTS

B.4..... ORO B30 OBLIGATION OF FUNDS (TIME-AND-MATERIALS/LABOR-HOUR) ALTERNATE III (MAY 1997)

B.5..... ORO B35 OPTION(S) TO EXTEND THE CONTRACT (TIME-AND-MATERIALS/ LABOR-HOUR) ALTERNATE III (MAY 1997) (Revised)

B.6..... ORO B65 LIMITATION OF GOVERNMENT'S OBLIGATION (TIME-AND- MATERIAL/LABOR-HOUR/FIXED-RATE CONTRACTS) (MAY 1997) (Revised)

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PART I - THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 ORO B01 ITEMS BEING ACQUIRED (ALTERNATE I) (MAY 1997) (Revised)

The Contractor shall furnish all personnel, and any facilities, equipment, material, supplies, and services not furnished by the Government as expressly set forth in this contract, and otherwise do all things necessary for, or incident to, the performance and providing the following items of work:

Item 1 - See Section C, ORO C01, Performance-Based Statement of Work.

Item 2 - Reports in accordance with Section J, Attachment A, "Reporting Requirements Checklist" and as specified in task orders.

[End of Clause]

B.2 ORO B13 PRICE SCHEDULE (TIME-AND-MATERIAL AND LABOR-HOUR) (MAY 1997) (Revised)

- (a) The Contractor shall provide personnel in the labor categories and at the hourly rates (wages, indirect costs, general and administrative expenses, and profit) set forth below. The quantity of Direct Productive Labor-Hours (DPLH) are estimated amounts and may vary during the period of performance. DPLH are defined as actual hours worked exclusive of vacation, holiday, sick leave and other advances; DPLH include subcontract hours used in performance of the statement of work.
- (b) The hourly rates are fixed for the full period of performance of this contract. The wage rates included in the fully burdened hourly rates are not subject to revision unless required by the Service Contract Act, referenced in clause FAR 52.222-41 "Service Contract Act of 1965, As Amended," Section I of this contract. Any adjustment required by the Service Contract Act will be in accordance with Department of Labor (DOL) Wage Determinations. Any revised DOL Wage Determination will be included in Part III, Section J of this contract. The indirect costs, general and administrative expense, and profit applied to the hourly rates are fixed for the full term of the contract and will not be changed if wage rates are adjusted as a result of the Service Contract Act.
- (c) All materials, supplies, and equipment will be furnished by the Government as set forth in Section H, H95 Government Property. In the event, however, that the Contractor is required by the Contracting Officer to acquire such items, reimbursement will be in accordance with FAR 52.232-7, Payments Under Time-and-Material and Labor-Hour Contracts, Section I of this contract.
- (d) In the event that any travel is required, the Contractor will obtain the approval of the Contracting Officer or the Contracting Officer's Representative.
- (e) Reasonable and allocable material handling costs may be included in the charge for materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The material handling cost rate is fixed for the full period of performance of this contract.
- (f) In accordance with Section E of this contract, FAR 52.246-6, Inspection--Time-and-Material and Labor-Hour, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in FAR 52.246-6, paragraph h, the cost of replacement or correction shall be determined under Section I of this contract, FAR 52.232-7, Payments Under Time-and Material and Labor-Hour Contracts, but the hourly rates for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit.

- (g) Notwithstanding the estimated DPLH, should it be insufficient or in excess of that needed, the contract term shall prevail and the Contractor will be required to provide the DPLH that may be considered reasonable by DOE during the term of this contract. In the event the Contractor shall be required to provide more than the estimated DPLH set forth herein, a contract modification will be required to increase the estimated DPLH and the contract ceiling based on the hourly rates stated in this contract.
- (h) Nothing in this clause shall be construed to constitute authorization for work not in accordance with the "Limitation of Government's Obligation" clause in Section B of this contract.

Price Schedule

Transition Period TBD to TBD

[illegible]

The hourly rates include a profit of _____ percent.

The normal company indirect rate (s) allocated to purchase materials is _____ percent and is included in the Other Direct Costs above.

*All Overtime and Other Direct Costs must be approved by the Contracting Officer's Technical Representative prior to incurrence.

Price Schedule
Base Year, TBD – TBD (Year 1)

| Labor Categories | Prime Sub (P/S) | Exempt/ Non-Exempt (E/N) | FTEs | Estimated DPLH | Base Rate | Fully Loaded Base Rate | Estimated Overtime (OT) Hours** | OT Base Rate | Fully Loaded OT Rate* | Estimated Amount |
|---------------------------------|-----------------|--------------------------|-------------|----------------|-----------|------------------------|---------------------------------|--------------|-----------------------|------------------|
| Program Manager | | E | 1.0 | 1,875 | | | 0 | | | |
| Network Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Software Development Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Secretary I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist II | | N | 5.0 | 9,375 | | | 100 | | | |
| Computer Support Specialist III | | N | 6.0 | 11,250 | | | 200 | | | |
| Technical Writer | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator II*** | | N | 0 | 0 | | | 0 | | | |
| Computer Operator III | | N | 2.0 | 3,750 | | | 200 | | | |
| Computer Operator IV | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator V | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst II | | N | 4.0 | 7,500 | | | 0 | | | |
| Computer Systems Analyst III | | E | 2.0 | 3,750 | | | 0 | | | |
| Total Estimated Labor | | | 28.0 | 52,500 | | | 500 | | | |
| Other Direct Costs* | | | | | | | | | | |
| Ceiling Price – Year 1 | | | | | | | | | | 1,838,818 |

The hourly rates include a profit of _____ percent.

The normal company indirect rate (s) allocated to purchase materials is _____ percent and is included in the Other Direct Costs above.

*All Overtime and Other Direct Costs must be approved by the Contracting Officer's Technical Representative prior to incurrence.

** Estimated overtime hours are based on historical information, however, other labor positions may require overtime.

***Although no hours are anticipated prior to award, this position may be filled after award.

Price Schedule**Base Year 2, TBD – TBD (Year 2)**

| Labor Categories | Prime Sub (P/S) | Exempt/ Non-Exempt (E/N) | FTEs | Estimated DPLH | Base Rate | Fully Loaded Base Rate | Estimated Overtime (OT) Hours** | OT Base Rate | Fully Loaded OT Rate* | Estimated Amount |
|---------------------------------|-----------------|--------------------------|-------------|----------------|-----------|------------------------|---------------------------------|--------------|-----------------------|------------------|
| Program Manager | | E | 1.0 | 1,875 | | | 0 | | | |
| Network Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Software Development Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Secretary I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist II | | N | 5.0 | 9,375 | | | 100 | | | |
| Computer Support Specialist III | | N | 6.0 | 11,250 | | | 200 | | | |
| Technical Writer | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator II*** | | N | 0 | 0 | | | 0 | | | |
| Computer Operator III | | N | 2.0 | 3,750 | | | 200 | | | |
| Computer Operator IV | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator V | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst II | | N | 4.0 | 7,500 | | | 0 | | | |
| Computer Systems Analyst III | | E | 2.0 | 3,750 | | | 0 | | | |
| Total Estimated Labor | | | 28.0 | 52,500 | | | 500 | | | |
| Other Direct Costs* | | | | | | | | | | |
| Ceiling Price – Year 2 | | | | | | | | | | 1,893,914 |

The hourly rates include a profit of _____ percent.

The normal company indirect rate (s) allocated to purchase materials is _____ percent and is included in the Other Direct Costs above.

*All Overtime and Other Direct Costs must be approved by the Contracting Officer's Technical Representative prior to incurrence.

** Estimated overtime hours are based on historical information, however, other labor positions may require overtime.

***Although no hours are anticipated prior to award, this position may be filled after award.

Price Schedule (Time and Material and Labor-Hour)
Option Year 1, TBD – TBD (Year 3)

| Labor Categories | Prime Sub (P/S) | Exempt/ Non-Exempt (E/N) | FTEs | Estimated DPLH | Base Rate | Fully Loaded Base Rate | Estimated Overtime (OT) Hours** | OT Base Rate | Fully Loaded OT Rate* | Estimated Amount |
|---------------------------------|-----------------|--------------------------|-------------|----------------|-----------|------------------------|---------------------------------|--------------|-----------------------|------------------|
| Program Manager | | E | 1.0 | 1,875 | | | 0 | | | |
| Network Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Software Development Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Secretary I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist II | | N | 5.0 | 9,375 | | | 100 | | | |
| Computer Support Specialist III | | N | 6.0 | 11,250 | | | 200 | | | |
| Technical Writer | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator II*** | | N | 0 | 0 | | | 0 | | | |
| Computer Operator III | | N | 2.0 | 3,750 | | | 200 | | | |
| Computer Operator IV | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator V | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst II | | N | 4.0 | 7,500 | | | 0 | | | |
| Computer Systems Analyst III | | E | 2.0 | 3,750 | | | 0 | | | |
| Total Estimated Labor | | | 28.0 | 52,500 | | | 500 | | | |
| Other Direct Costs* | | | | | | | | | | |
| Ceiling Price – Year 3 | | | | | | | | | | 1,950,570 |

The hourly rates include a profit of _____ percent.

The normal company indirect rate (s) allocated to purchase materials is _____ percent and is included in the Other Direct Costs above.

*All Overtime and Other Direct Costs must be approved by the Contracting Officer's Technical Representative prior to incurrence.

** Estimated overtime hours are based on historical information, however, other labor positions may require overtime.

***Although no hours are anticipated prior to award, this position may be filled after award.

Price Schedule (Time and Material and Labor-Hour)
Option Year 2, TBD – TBD (Year 4)

| Labor Categories | Prime Sub (P/S) | Exempt/ Non-Exempt (E/N) | FTEs | Estimated DPLH | Base Rate | Fully Loaded Base Rate | Estimated Overtime (OT) Hours** | OT Base Rate | Fully Loaded OT Rate* | Estimated Amount |
|---------------------------------|-----------------|--------------------------|-------------|----------------|-----------|------------------------|---------------------------------|--------------|-----------------------|------------------|
| Program Manager | | E | 1.0 | 1,875 | | | 0 | | | |
| Network Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Software Development Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Secretary I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist II | | N | 5.0 | 9,375 | | | 100 | | | |
| Computer Support Specialist III | | N | 6.0 | 11,250 | | | 200 | | | |
| Technical Writer | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator II*** | | N | 0 | 0 | | | 0 | | | |
| Computer Operator III | | N | 2.0 | 3,750 | | | 200 | | | |
| Computer Operator IV | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator V | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst II | | N | 4.0 | 7,500 | | | 0 | | | |
| Computer Systems Analyst III | | E | 2.0 | 3,750 | | | 0 | | | |
| Total Estimated Labor | | | 28.0 | 52,500 | | | 500 | | | |
| Other Direct Costs* | | | | | | | | | | |
| Ceiling Price – Year 4 | | | | | | | | | | 2,009,080 |

The hourly rates include a profit of _____ percent.

The normal company indirect rate (s) allocated to purchase materials is _____ percent and is included in the Other Direct Costs above.

*All Overtime and Other Direct Costs must be approved by the Contracting Officer's Technical Representative prior to incurrence.

** Estimated overtime hours are based on historical information, however, other labor positions may require overtime.

***Although no hours are anticipated prior to award, this position may be filled after award.

Price Schedule (Time and Material and Labor-Hour)
Option Year 3, TBD – TBD (Year 5)

| Labor Categories | Prime Sub (P/S) | Exempt/ Non-Exempt (E/N) | FTEs | Estimated DPLH | Base Rate | Fully Loaded Base Rate | Estimated Overtime (OT) Hours** | OT Base Rate | Fully Loaded OT Rate* | Estimated Amount |
|---------------------------------|-----------------|--------------------------|-------------|----------------|-----------|------------------------|---------------------------------|--------------|-----------------------|------------------|
| Program Manager | | E | 1.0 | 1,875 | | | 0 | | | |
| Network Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Software Development Lead | | E | 1.0 | 1,875 | | | 0 | | | |
| Secretary I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Support Specialist II | | N | 5.0 | 9,375 | | | 100 | | | |
| Computer Support Specialist III | | N | 6.0 | 11,250 | | | 200 | | | |
| Technical Writer | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator II*** | | N | 0 | 0 | | | 0 | | | |
| Computer Operator III | | N | 2.0 | 3,750 | | | 200 | | | |
| Computer Operator IV | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Operator V | | E | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst I | | N | 1.0 | 1,875 | | | 0 | | | |
| Computer Systems Analyst II | | N | 4.0 | 7,500 | | | 0 | | | |
| Computer Systems Analyst III | | E | 2.0 | 3,750 | | | 0 | | | |
| Total Estimated Labor | | | 28.0 | 52,500 | | | 500 | | | |
| Other Direct Costs* | | | | | | | | | | |
| Ceiling Price – Year 5 | | | | | | | | | | |
| Ceiling Price – Contract | | | | | | | | | | 9,768,559 |

The hourly rates include a profit of _____ percent.

The normal company indirect rate (s) allocated to purchase materials is _____ percent and is included in the Other Direct Costs above.

*All Overtime and Other Direct Costs must be approved by the Contracting Officer's Technical Representative prior to incurrence.

** Estimated overtime hours are based on historical information, however, other labor positions may require overtime.

***Although no hours are anticipated prior to award, this position may be filled after award.

B.3 ORO B18 MINIMUM/MAXIMUM REQUIREMENTS

The Contractor shall provide the services and deliverables subject to the following minimum and maximum requirements:

- (a) The minimum amount of \$310,000 is applicable to this contract.
- (b) The maximum amount of \$TBD is applicable to this contract.

[End of Clause]

B.4 ORO B30 OBLIGATION OF FUNDS (TIME-AND-MATERIALS/LABOR-HOUR) ALTERNATE III (MAY 1997)

Pursuant to Section B of this contract, "Limitation of Government's Obligation, Time-and-Materials and Labor-Hour Contracts," the total amount obligated to this contract for the item(s) described in Section B, ORO B01 is \$TBD. It is estimated that this amount is sufficient to cover contract performance through TBD.

[End of Clause]

B.5 ORO B35 OPTION(S) TO EXTEND THE CONTRACT (TIME-AND-MATERIALS/ LABOR-HOUR) ALTERNATE III (MAY 1997) (Revised)

- (a) In order to demonstrate the value it places on quality performance, the Department has provided a mechanism for continuing a contractual relationship with a successful contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the contracting officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's performance under this contract as specified in the performance based statement of work including the performance objectives and measures.
- (b) This contract shall be extended, at the unilateral option of the Government in accordance with FAR 52.217-9 set forth in Section I of this contract. Further, the Contractor agrees that the performance under option(s) which are exercised shall be accomplished within the hourly rates and contract ceiling price set forth in the price schedule.
- (c) As may be appropriate, the Government may elect to authorize the use of option hours earlier than the period stated in the price schedules. This contract will then be modified to exercise the option early. The term of the contract shall be extended to the end of the exercised option period. DPLH not expended during the specified period may be expended during a subsequent period.
- (d) Nothing in this clause shall be construed to constitute authorization for work not in accordance with the Section B clause of this contract entitled, "Limitation of Government's Obligation."

[End of Clause]

B.6 ORO B65 LIMITATION OF GOVERNMENT'S OBLIGATION (TIME-AND- MATERIAL/LABOR-HOUR/FIXED-RATE CONTRACTS) (MAY 1997) (Revised)

- (a) It is estimated that the total payment to the Contractor by the Government for the performance of this contract will not exceed the estimated amount set forth in Part I, The Schedule, (herein referred to as the Schedule), and the Contractor agrees to use the best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated amount.
- (b) The sum presently available for payment and obligated to this contract, the items covered thereby, and the period of performance which it is estimated the obligated amount will cover are specified in the Schedule. It is anticipated that, from time to time, additional funds will be obligated to this contract up to the full estimated amount. When additional funds are obligated

from time to time for continued performance of the work, the parties will agree as to the applicable estimated period of contract performance which will be covered by the funds, and this contract schedule will be amended accordingly. The Contractor agrees to perform or have performed work on this contract up to the point at which, in the event of termination of this contract for the convenience of the Government pursuant to Section I of this contract, 52.249-6, "Termination (Cost Reimbursement)" the total amount paid and payable by the Government pursuant to paragraph (f) of the clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time obligated to this contract. The Contractor will not be obligated to continue performance of the work beyond that point.

- (c) The Government will not be obligated to make any payment to the Contractor, including payment in respect to subcontracts and termination settlement costs, in excess of the total amount from time to time obligated to this contract. However, when and to the extent that the total amount obligated to this contract has been increased, any invoice or voucher with respect to a period prior to the increase, and in excess of the amount previously obligated, will be paid as if the invoice or voucher were for a period after the increase in amount obligated.
- (d) If funds obligated are considered by the Contractor to be inadequate to cover the work to be performed for the period set forth in the Schedule, the Contractor will notify the Contracting Officer in writing within the next 30 days if the work will reach a point at which, in the event of termination of this contract for the convenience of the Government pursuant to Section I of this contract, 52.249-6, "Termination (Cost Reimbursement)," the total amount paid and payable by the Government pursuant to paragraph (f) of the clause will approximate 75 percent of the total amount then obligated to this contract. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. The Contractor will, 30 days prior to the end of the period specified in the Schedule; advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required, on the basis of the obligation of performance stated in (b) above, for the timely performance of the work under this contract for such further period as may be specified in the Schedule or otherwise agreed by the parties. If, after such notification, additional funds are not obligated by the end of the period set forth in the Schedule, or by an agreed substitute date; the Contracting Officer will consider, upon written request of the Contractor, terminating this contract on that date, or on a date to be specified in the request; on which the Contractor, in the exercise of reasonable judgment, estimates that he will have discharged his obligation to perform as stated in (b) above; whichever is later, pursuant to the provision of clause 52.249-6 "Termination (Cost Reimbursement)."
- (e) When additional funds are obligated from time to time for continued performance of the work under this contract, the provisions of (b), (c) and (d) above will apply in like manner to the additional obligated funds and substituted date and this contract will be amended accordingly.
- (f) The Government may at any time prior to termination obligate additional funds for this contract and, with the consent of the Contractor, after notice of termination, may rescind the termination in whole or in part, and obligate additional funds for this contract.
- (g) Nothing in this clause will affect the right of the Government to terminate this contract pursuant to Section I of this contract, 52.249-6, "Termination (Cost Reimbursement)."
- (h) For the purpose of this clause, the obligations specified in the Schedule will not be decreased without the consent of the Contractor.
- (i) This clause will be applicable and, paragraph (c) of Section I of this contract, 52.232-7 "Payments under Time-and-Materials and Labor-Hour Contracts," inapplicable until such time as an amount equal to the total estimated amount of this contract set forth in the Schedule is obligated to this contract, and hereafter paragraph (d) of 52.232-7 "Payments Under Time-and-Materials and Labor-Hour Contracts," will be applicable and this clause inapplicable.

[End of Clause]

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PART I - THE SCHEDULE

SECTION C DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1..... ORO C01 PERFORMANCE-BASED STATEMENT OF WORK ALTERNATE I (MAY 1997)

C.2..... ORO C20 REPORTS (MAY 1997)

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SECTION C

DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 ORO C01 PERFORMANCE-BASED STATEMENT OF WORK ALTERNATE I (MAY 1997)

1.0 INTRODUCTION

The U.S. Department of Energy (DOE), Oak Ridge Operations Office (ORO), is acquiring an array of information technology (IT) support services to assist the DOE-ORO Information Resources Management Division (IRMD) in accomplishing its information management (IM) responsibilities.

2.0 BACKGROUND

DOE/ORO recognizes that information is a valuable corporate resource that requires proper management analogous to other corporate resources such as materials, property, and people. Therefore, ORO has adopted the following approach in managing its information resources:

(1) document the business processes conducted by ORO; (2) identify the information needed to support the business processes along with establishing the owners of the information and the information flow; (3) define and implement automated applications to efficiently and effectively supply the right information to the right sources; and (4) identify and procure technologies to provide mechanisms to run the applications. To further ensure this proper management, ORO has established an information management function within its organizational structure and has assigned responsibility of this function to the IRMD. The Information Resources Management Division currently services approximately 1,000 potential users in the ORO and support services contractor workforce, located at various Oak Ridge sites, including but not limited to, the Federal Building, 55 Jefferson Circle, 2714 Complex, 1916T2 Building, East Tennessee Technology Park Site Office, and the National Nuclear Security Administration Y-12 Site Office.

IRMD, through the Computing Management Group (CMG), provides leadership in the development and implementation of the strategies and architectures for a sound corporate information infrastructure. This leadership is guided by input received through the DOE Departmental management structure.

A variety of matrix assignments, teaming arrangements, enterprise working groups, and other coordination mechanisms have been established to ensure the active involvement of all interested organizations and individuals within ORO.

In 1995, ORO began an aggressive modernization effort to move to an open system that enables hardware and applications software to interoperate with other applications, to be ported with minimal changes across systems, and to be geographically invisible. The establishment of a state-of-the-art, robust, flexible, reliable, secure, and user-friendly computing infrastructure is focused on the desktop, office automation, the network, and communications. Desktop minimum standards have been defined, and virtually all systems now exceed the minimum requirements. A standard suite of office automation software has been implemented which supports software for word processing, spreadsheets, presentations, database management, Internet access, and e-mail. The desktop minimum standards and standard software suite are provided in Table 1 below. Wiring of ORO facilities to the desktop and copper/fiber to connect facilities and communication hubs have been completed in accordance with the Oak Ridge standard wiring plans.

TABLE 1
ORO Desktop Standards¹

| Hardware² | |
|--|---|
| CPU | Intel Pentium 120 MHz |
| Memory | 32 MB RAM |
| Video Card | 2 MB Graphic Accelerator |
| Monitor | 17" Super VGA |
| CD-ROM Drive | 10x speed |
| Hard Drive | 2.1 GB |
| Floppy Disk Drive | 3.5" 1.44 MB |
| Network Card | 10 Base T 16-bit Ethernet |
| Sound Card and Speakers (optional) | 16-Bit sound card and speakers |
| Software | |
| Operating System | Windows 95 |
| Network Applications | <ul style="list-style-type: none"> • McAfee 4.5 • MS Outlook 98 |
| Office Applications (running on the desktop) | Corel WordPerfect Suite 8 Standard Edition includes: WordPerfect 8, Quattro Pro 8, Presentation 8 <ul style="list-style-type: none"> • Microsoft Office 97 Professional includes: Excel 97, PowerPoint 97, Access 97³, Word 97 • MS Project 98 • MS FrontPage 98 |
| Other | <ul style="list-style-type: none"> • Netscape Communicator v. 4.7 • Adobe Acrobat Reader v. 4.0 • PrintScreen 95 v. 4 • Internet Explorer v. 5.0 • WinZip 7.0 |

¹ Does not include Site Offices.

² These are the minimum requirements; most systems now exceed the minimum. Currently phasing out the 120s.

³ Although Microsoft Access has been determined to be the appropriate Commercial Off The Shelf (COTS) product to build a database management system for desktop applications, for enterprise-wide and high-usage applications, Oracle will be the relational database management system used to facilitate interoperability across DOE. Both systems are hosted on the DOE-ORO Windows NT network. Windows NT has been chosen as the server with the best workstation/small server capabilities, SUN Solaris' UNIX is the operating system of choice for enterprise or robust solutions.

As efforts continue to stabilize this new infrastructure, ORO has begun to focus on the establishment of a DOE-wide corporate strategy for the development and implementation of corporate and enterprise information management systems. This strategy will embrace Departmental information management strategic goals and will be based on the DOE Information Architecture Program (available at <http://cio.doe.gov/>), which was established to foster economies of scale through collaborative development of Departmental, site, and program information architectures. The ORO information management strategy will be documented in the ORO Information Management Plan (Reference Document #1). The ORO technical architecture will be documented in the ORO Technical Architecture Specification (TAS) (Reference Document #2).

3.0 SCOPE

This effort acquires services to assist DOE in performing the following objectives for the ORO IT environment:

- 3.1 Information users have access to easy-to-use desktop workstations with needed information available in formats that meet the needs of respective users. Improved user productivity will be the foremost consideration in the development, selection, and implementation of IM products and services. Users will have desktop software updated automatically, management and control of licensing agreements, and mobile computer capabilities. Every ORO computer workstation will consist of an ergonomically-designed keyboard and mouse and Energy Star®-compliant computer products.
- 3.2 Corporate systems within ORO's control have a common look and useful help facilities. ORO will have an IT infrastructure that seamlessly links ORO offices and programs and any other organizations needed to support the business of ORO. Information technology services will foster increased corporate collaboration in responding to changing business needs.
- 3.3 Shared information resources are available at the desktop with the World Wide Web as the primary delivery mechanism. ORO will have state-of-the-art, high-speed network connectivity both internally and externally. ORO staff will have the capability to access all of their desktop functionality from any geographic location and will have the capability to form virtual (not bounded by geographic location) work groups.
- 3.4 A help-desk function provides customer-oriented support to ensure customer satisfaction. Effective training is provided to help users gain maximum productivity from desktop applications.
- 3.5 Achievement of ORO's major initiative to implement a corporate-wide electronic document imaging and records management system with scanning, routing, tracking, reporting, and storage capabilities. Availability of electronic information resources is maximized to support ORO's daily business.
- 3.6 Information security is designed into all IM components, balancing accessibility and ease of use with protection of data.
- 3.7 State-of-the-art methods and tools are identified by surveying and analyzing new vendor products for application to ORO business requirements. New methods and technologies are implemented to enhance the productivity of ORO staff. Desktop computers are replaced on a standard cycle.
- 3.8 Information systems are scalable, extensible, and easy to maintain. Development tools automate the mundane while enabling creativity. Software is interoperable across a spectrum of environments. Information systems developed in outdated and obsolete software are re-engineered. The work is performed according to plans and budgets.
- 3.9 Specialized needs are met with rapid development at minimum costs.
- 3.10 ORO information resources are clearly identified and inventoried.

4.0 APPLICABLE DIRECTIVES

The Contractor shall fully comply with all applicable regulations, ORO procedures, and DOE directives which are, in part, identified below. Additional specific directives will be identified in each task order. The DOE directives are available at <http://www.explorer.doe.gov>.

| | |
|----------------|---|
| DOE M 200.1-1 | Telecommunications Security Manual |
| DOE M 471.2-1B | Classified Matter Protection and Control Manual |
| DOE M 475.1-1 | Identifying Classified Information |
| DOE M 5731.1-1 | Mail Services User's Manual |
| DOE N 142.1 | Unclassified Foreign Visits and Assignments |
| DOE N 203.1 | Software Quality Assurance |
| DOE N 205.1 | Unclassified Cyber Security Program |
| DOE N 205.3 | Password Generation, Protection, and Use |
| DOE N 206.1 | Electronic Mail Analysis Capability |

| | |
|---------------------|--|
| DOE N 430.2 | Extension of In-house Energy Management |
| DOE N 471.2 | Extension of DOE O 471.2A |
| DOE N 473.4 | Department of Energy Badges |
| DOE O 231.1, Chg. 2 | Environment, Safety, and Health Reporting |
| DOE O 200.1 | Information Management Program |
| DOE O 414.1A | Quality Assurance |
| DOE O 420.1 | Facility Safety |
| DOE O 430.1A | Life Cycle Asset Management |
| DOE O 430.2 | In-house Energy Management |
| DOE O 451.1A | National Environmental Policy Act Compliance Program |
| DOE O 470.1 | Safeguards and Security Program |
| DOE O 471.1A | Identification and Protection of Unclassified Controlled Nuclear Information |
| DOE O 471.2A | Information Security Program |
| DOE P 142.1 | Unclassified Foreign Visits and Assignments |
| DOE P 450.1 | Environment, Safety, and Health Policy for the Department of Energy Complex |
| DOE P 450.2A | Identifying, Implementing, and Complying with Environment, Safety, and Health Requirements |
| DOE P 450.4 | Safety Management System Policy |
| DOE P 450.6 | Secretarial Policy Statement, Environment, Safety, and Health |
| DOE 2030 | Reporting Fraud, Waste, and Abuse to the Office of Inspector General |
| DOE 4300.1C | Real Property Management |
| DOE 4320.2A | Capital Management Asset Process |
| DOE 4330.4B | Maintenance Management Program |
| DOE 5480.4 | Environmental Protection, Safety, and Health Protection Standards |
| DOE 5610.2 | Control of Weapon Data |
| ORO N 471.2 | Technical Surveillance Countermeasures (TSCM) Program |
| ORO O 220, Chap. I | Reporting Fraud, Waste, and Abuse to the Office of Inspector General |
| ORO O 230, Chap. II | Environment, Safety, and Health Reporting |
| ORO O 420, Chap. I | Facility Safety |
| ORO O 430, Chap. I | Life Cycle Asset Management |
| ORO O 430, Chap. II | In-house Energy Management |
| ORO O 450, Chap. II | National Environmental Policy Act Compliance Program |
| ORO O 470, Chap. II | Identification and Protection of Unclassified Controlled Nuclear Information (UCNI) |

The Contractor shall adhere to 36 CFR (Code of Federal Regulations), Part 1234, Electronic Records Management when DOE-ORO records are created and/or maintained on the DOE-ORO network. This document is provided at <http://www.nara.gov/nara/cfr/cfr1234.html>.

The Contractor shall also adhere to the DOE-ORO Cyber Security Protection Plan, which will be provided, in award, to the Contractor.

5.0 PERFORMANCE REQUIREMENTS

The Contractor shall perform IT support functions including, but not limited to, software engineering and system management; end-user support and related administration services; and computer/network operations. The Statement of Work outlines the general requirements for services to be provided. Specific details of work assignments, documentation, training, applicable departmental and industry standards, etc., will be provided in task orders. The services of the Contractor will be available to all programmatic elements of ORO. The Contractor will take direction from the CMG. The functions performed by the Contractor shall include the following:

5.1 Software Engineering and Systems Management

Performance Objective 1: The Contractor will manage task orders to accomplish the requirements within cost ceilings.

Measure 1: Cost Management reports will indicate operations within cost ceilings.

Measure 2: Schedules are developed by product, maintained throughout the task, and variances are documented with no more than 5% of established milestones missed.

The Contractor shall provide support to the ORO corporate IM environment and apply software engineering and development methodologies and standards to the life-cycle management of IM systems. Services include, but are not limited to:

5.1.1. Providing project management for the development and implementation of DOE and/or ORO corporate IM systems, and coordinating the implementation of commercial applications and deployment of other DOE applications at ORO.

5.1.2. Providing configuration management of the ORO IM system to include an inventory of ORO information systems, change/version control, and system retirement.

5.1.3. Applying software engineering methodologies to the development and management of ORO corporate IM systems in accordance with the DOE Information Architecture Program, the DOE Software Engineering Methodology (Reference Document #3), the Departmental IM strategic goals, ORO Information Management Plan, and ORO strategic business goals.

5.1.4. Providing technical project management of the ORO TAS; and maintaining the TAS to ensure compliance with the Departmental technical architecture and the DOE Information Technology Standards Program (Reference Document 4).

5.1.5. Providing database administration of ORO corporate information in accordance with the ORO Information Management Plan and TAS.

5.1.6. Providing technical guidance and expertise to the strategic planning process and participating in Departmental technical working groups.

5.1.7. Conducting special studies of information service areas as directed. These studies are generally for the purpose of making decisions toward the application of information resources technologies within ORO and evaluation of new and ongoing technology initiatives.

5.1.8. Providing software engineering services to include:

- (a) Customer interviews and discussions for requirements gathering
- (b) Project definition, planning, quality assurance and management activities
- (c) System analysis, design, development, testing, implementation, and maintenance activities
- (d) Development and maintenance of System and User documentation
- (e) Software process assessments
- (f) Feasibility studies
- (g) Development of system metrics
- (h) Development of web pages and web applications
- (i) Re-engineer existing systems
- (j) Train of users on new information systems
- (k) Component-based systems development
- (l) Implement and document security controls

5.2. End User Support and Related Administration Support. The Contractor shall provide planning, analysis, troubleshooting, integration, acquisition, installation, maintenance, training, and documentation support services; and provide general management and administration of these services. Services include, but are not limited to:

5.2.1. Providing user support services to the ORO staff as needed to ensure usability of IT resources.

Performance Objective 2: Provide timely and quality support to users of the ORO network.

Measure 1: Receipt of trouble ticket (request for service) is acknowledged to requester within one hour of receipt for emergencies and four hours for all other requests. A request is considered an emergency when the user is nonfunctional due to system/software failure.

Measure 2: Tickets categorized as emergency will receive initial response within two hours of receipt of request. All others will receive initial response within two workdays; no more than three non-emergency requests per month will exceed the two-workday initial response time.

Measure 3: The Contractor independently resolves customer complaints with no more than five valid complaints elevated by the customer to CMG per quarter.

This will generally be provided by:

- (a) Responding to specific requests from users to resolve problems encountered using microcomputer hardware and software
- (b) Clarifying software operations
- (c) Training users
- (d) Assisting in the recovery of data
- (e) Evaluating hardware, firmware, peripherals, software packages, etc., and providing recommendations
- (f) Accessing network services and resources (including account management for accessing e-mail and other network services)
- (g) Installing and orienting personal computer and peripherals
- (h) Diagnosing, repairing and/or replacing of personal computers, servers, peripherals, and components
- (i) Maintaining and managing a loaner pool of IT equipment available to employees for short-term use

5.2.2 Operating the Help Desk/Resource Center, which serves as the primary interface for users to request support.

Performance Objective 3: Reduce the need to send technicians to the customer's desktop.

Measure 1: Establish measures to increase the resolution by telephone of customer calls for assistance and reduce the need to respond in person.

Measure 2: Establish and keep an updated database of information available to all users for self-service training and/or answers to frequently asked questions.

Services include, but are not limited to:

- (a) Maintaining and updating an automated process for managing and responding to user requests
- (b) Providing training and resource assistance for use of ORO IT resources
- (c) Establishing and operating a customer innovation program to encourage, collect, assess, and implement innovative ideas solicited from the customer-user base
- (d) Analyzing trends in user requests and trouble tickets for opportunities to apply IT and additional training requirements
- (e) Maintaining a collection of documentation related to computing support such as office automation procedures, orders, commercial practices, standards, guidelines, vendor source lists for pricing, and availability of IT
- (f) Staffing the Help Desk/Resource Center during the hours of 7:30 A.M. until 5:00 P.M., Monday through Fridays (excluding federal holidays and emergency closings as determined by the Government), with an emergency contact provided for after-hours response to network operational and security failures

5.2.3. Maintaining Information Technology Security

Performance Objective 4: Manage the computing network such that preventable cyber attacks do not limit network services.

Measure 1: All updates to computer virus protection software are provided to users within a week of release.

Measure 2: Disaster recovery, continuity plans, etc., are reviewed, revised, and/or updated annually.

The Contractor will provide IT security, to include:

- (a) Development and maintenance of computer security programs which educate users on computer security issues; provides for disaster recovery; continuity of operations; contingency planning; virus detection, elimination and prevention; and risk assessments
- (b) Maintenance of physical and technical security for all assigned IT systems
- (c) Implementation of procedures to protect hardware, software, networks, and information

5.2.4. Establishing a process for the life-cycle management of the IT resources inventory.

Performance Objective 5: All computer-related equipment will be accounted for and inventoried.

Measure 1: Through augmentation, if necessary, of existing inventory systems, maintain a real time inventory accounting of all ORO computer related equipment and spare parts.

Measure 2: Ensure that all equipment is tested in a manner consistent with return to vendor agreements for replacement of defective systems.

Measure 3: Ensure compliance with all software license agreements.

The Contractor shall perform the following services:

- (a) Maintaining an automated inventory of all IT resources acquired, tracking of locations and assignment of all sensitive IT equipment, and excessing equipment and software which is no longer serviceable or useful (Sensitive IT equipment is currently defined as personal computers, monitors, printers (except portable), portable computers, desktop scanners, desktop video projectors, and any other IT equipment which costs \$5,000 or more.)
- (b) Validating compliance with all equipment warranties and software licenses
- (c) Administering maintenance agreements for software upgrades, technical support, preventative maintenance, and repairs of equipment
- (d) Establishing a process for continuously assessing the usefulness, appropriateness, and need for such agreements

5.2.5. Providing plans, reports, updates, and reviews.

Performance Objective 6: Compliance with all DOE-ORO planning and reporting requirements.

Measure 1: Planning and reporting requirements meet or exceed the dates stated in the contract, where applicable, or negotiated with the COR for other requirements.

The Contractor shall provide plans, reports, updates, and reviews in accordance with contract requirements and/or technical direction as follows:

- (a) Provide support for the development of operating plans, computer security plans, strategic plans, and special programs for IT support at ORO
- (b) Update and review technical manuals, guidelines, and other documents as needed
- (c) Develop project plans for special projects and major assignments
- (d) Prepare project schedules to plan work, allocate resources, and plan and track progress toward project milestones
- (e) Provide the COR the results of annual self-assessment evaluations, along with a corrective action plan
- (f) Forecast performance relative to milestones, schedules, labor allocation, and funding requirements
- (g) Establish clear responsibility delegation and feedback channels
- (h) Provide plans and reports in accordance with contract requirements, reporting requirements checklist, and technical direction.

5.2.6. Providing immediate reporting of all incidences and occurrences, which pose threats to health and safety or security, in accordance with DOE directives.

5.2.7. Providing documentation support and technical writing, editing, graphic design, and desktop publishing support for presentation and publication of reports, newsletters, reference materials, technology evaluations, announcements, and other communications concerning ORO computing support activities.

5.3 Computer/Network Operations

Performance Objective 7: Maintain a secure, reliable network capable of supporting the varying mission requirements of ORO.

Measure 1: Maintain a system availability (uptime) of 98% or higher.

Measure 2: Update network configuration drawings and provide to IRMD within 72 hours of configuration changes.

Measure 3: E-mail system is maintained and configured to reduce downtime to no more than four business hours.

The Contractor shall provide the technical expertise for the computer/network operations function. This function provides administration, management, and operation of the ORO technical architecture. The ORO technical architecture is targeted to be modeled as an open system environment based on DOE-adopted standards and/or industry standards which will allow operation of a heterogeneous, multi-vendor network of hardware, software, and communication platforms supporting interoperability, scalability, and portability of applications. Services include, but are not limited to:

5.3.1. Supporting the planning, implementation, and maintenance of multiple-site local area network and wide-area network 24-hours a day, to include:

- (a) Coordinating with other federal and contractor organizations for network resources and external communications interfaces (primarily for the purpose of routing and exchanging communications)
- (b) Supporting, defining, developing, and maintaining electronic inter-organizational business networks
- (c) Providing support for the data communications cabling and related tasks (the physical wiring and cabling between communications closets and offices will be performed by another DOE-ORO contractor)
- (d) Providing support during the normal business hours of 7:30 A.M. until 5:00 P.M.
- (e) Providing on-call 24-hour support to the Emergency Operations Center for network operational and security failures

5.3.2 Providing operational support such as backups and restoration of files, and providing monitoring of network resources and diagnostics to identify and resolve operational problems to ensure the networks are secure and operational 24-hours a day.

5.3.3. Providing systems and facility management of the ORO computer facilities data communication closets, to include:

- (a) Monitoring systems and network performances and resolving performance problems
- (b) Maintaining operations records such as maintenance logs, preventive maintenance logs, capacity management records, disaster recovery validation histories, and part/supplies usage
- (c) Developing and maintaining network configuration drawings
- (d) Providing installation of network resources such as servers, printers, and communications equipment (hubs, routers, etc)

5.3.4. Providing system and facility management of the ORO Firewall.

Performance Objective 8: Maintain a firewall that provides security against malicious penetration

attempts and attempts to evade security features.

Measures 1: Documentation of procedures for firewall operation, trouble shooting, off-hours operation, maintenance, and security incidents is kept current and available in the Computer Network Center.

Measure 2: CMG is promptly notified of issues and/or problems regarding the firewall.

Measure 3: Project plans, with milestones and due dates, are developed for all major implementations; due dates are tracked and CMG is notified if problems exist that impact planned due dates.

The Contractor shall provide the following services:

- (a) Maintaining and managing firewall components and configuration
- (b) Maintaining the security posture of the firewall components on a regular basis (e.g. through the use of security tools, such as Computerized Oracle and Password Systems, and tripwire)
- (c) Daily monitoring of the firewall for penetration attempts or attempts to evade security and maintaining incident reports
- (d) Reporting security incidents to the designated ORO organizations
- (e) Coordinating with other DOE or contractor firewall administrators to discuss firewall implementation needs and configuration issues
- (f) Implementing approved firewall exception requests, alerting DOE officials of potential problems with an approved request prior to implementing, and notifying the requestor of the firewall exception when the exception is implemented
- (g) Interfacing with personnel at DOE Headquarters (HQ) and other sites, when appropriate

5.3.5 Providing facility management of the ORO connection to the Department's Intranet (DOEnet).

Performance Objective 9: Maintain ORO components of the DOEnet to provide access for authorized users.

Measure 1: Maintain a system availability (uptime) of 98% or higher.

Measure 2: Ascertain, within two hours of notification of outage, whether the subject loss of functionality is local or outside ORO's purview; if local, the appropriate actions are taken to achieve the 98% or higher system availability.

The Contractor shall provide the following services:

- (a) Maintaining and managing DOEnet equipment assigned to ORO
- (b) Integrating DOEnet equipment with ORO network and other connections as required (direct, physical connections)
- (c) Coordinating with DOE HQ personnel to address issues such as outages and or configuration issues impacting ORO functionality
- (d) Implementing changes as approved, directed and/or coordinated with responsible ORO personnel
- (e) Coordinating with other Oak Ridge Reservation network owners that require access to DOEnet (coordination and implementation of approvals/permissions)
- (f) Providing sound, reliable network solutions

6.0 DELIVERABLES

The Contractor shall provide deliverables in accordance with the Reporting Requirements Checklist, Attachment A to Section J of the contract, and individual task orders.

7.0 REFERENCE DOCUMENTS

The following reference documents are accessible in the DOE Public Reading Room and on the DOE/ORO website at www.oro.doe.gov, if available:

1. Oak Ridge Operations Information Management Plan
2. Oak Ridge Operations Technical Architecture Specification
3. DOE Software Engineering Methodology, (<http://cio.doe.gov/smp/>)
4. DOE Information Technology Standards Program, (<http://cio.doe.gov/standards>)

[End of Clause]

C.2 ORO C20 REPORTS (MAY 1997)

Reports shall be prepared and submitted in accordance with Section J, Attachment A, Reporting Requirements, task orders, and other clauses in the contract which specify reporting requirements.

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PART I - THE SCHEDULE

SECTION D PACKAGING AND MARKING

D.1..... ORO D01 PACKAGING (MAY 1997) (Revised)

D.2..... ORO D05 MARKING (MAY 1997)

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SECTION D**PACKAGING AND MARKING****D.1 ORO D01 PACKAGING (MAY 1997) (Revised)**

- (a) Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).
- (b) Except for those reports required by the Reporting Requirements Checklist, Section J of this contract, which are coded by "As Required" where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded "As Required."

[End of Clause]

D.2 ORO D05 MARKING (MAY 1997)

- (a) Each package, report or other deliverable shall be accompanied by a letter or other document which:
 - (1) Identifies the contract by number under which the item is being delivered.
 - (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
 - (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of this contract, or if none, to the Contracting Officer.

[End of Clause]

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PART I - THE SCHEDULE

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E.2..... ORO E03 INSPECTION (MAY 1997)

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SECTION E

INSPECTION AND ACCEPTANCE

E.1 52.246-6 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (MAR 2001)

(a) Definitions. As used in this clause—

"Contractor's managerial personnel," means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location where the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

"Materials," includes data when the contract does not include the Warranty of Data clause.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Payments Under Time-and-Materials and Labor-Hour Contracts" clause, Section I, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—
 - (i) By contract or otherwise, perform the replacement or correction, charge to the

Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

- (h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

[End of Clause]

E.2 ORO E03 INSPECTION (MAY 1997)

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

[End of Clause]

E.3 ORO E05 ACCEPTANCE (MAY 1997) (Revised)

Acceptance of all work and effort under this contract (including "Reporting Requirements," Section J of this contract) shall be accomplished by the Contracting Officer, or any duly designated successors.

[End of Clause]

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PART I - THE SCHEDULE

SECTION F DELIVERIES OR PERFORMANCE

F.1..... 52.242-15 STOP-WORK ORDER (AUG 1989)

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SECTION F

DELIVERIES OR PERFORMANCE

F.1 52.242-15 STOP-WORK ORDER (AUG 1989)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

[End of Clause]

F.2 ORO F03 TERM OF CONTRACT ALTERNATE I (MAY 1997) (Revised)

The term of this contract is for two years. However, at the Government's sole discretion, this contract may be extended for three one-year options pursuant to Section B of this contract, "Option(s) To Extend the Contract (Time-and-Materials/Labor-Hour) Alternate III." The expiration date may also be adjusted in accordance with Section B, "Price Schedule." A transition period will commence within 2 days of contract award and will continue for no more than 14 days, with no more than 100 hours to be funded by the Government.

[End of Clause]

F.3 ORO F05 PRINCIPAL PLACE OF PERFORMANCE (MAY 1997)

The principal place of performance for this effort is Oak Ridge, Tennessee.

[End of Clause]

F.4 CONTRACT TRANSITION ACTIVITIES (MAR 2001)

During the period of transition specified in Section F of this contract, "Term of Contract," the Contractor shall perform those activities necessary to be prepared to assume responsibility for the IT support services in no more than 16 days after contract award. The Contractor shall coordinate its activities so as to accomplish these activities in a manner that will provide an effective transition of responsibility for these services. The Transition Plan, proposed by the Contractor and approved by DOE, delineates the scope of activities that are to be performed during the transition activities. DOE will fund no more than 100 labor hours to complete this effort.

[End of Clause]

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PART I - THE SCHEDULE

SECTION G CONTRACT ADMINISTRATION DATA

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G.2..... ORO G10 SUBMISSION OF VOUCHERS/INVOICES (SEPT 1999)

G.3..... ORO G15 BILLING INSTRUCTIONS--TIME AND MATERIALS CONTRACT ALTERNATE I
(MAY 1997)

G.4..... ORO G20 CONTRACTING OFFICER'S REPRESENTATIVE (COR) (MAY 1997)

G.5..... ORO G25 CONTRACT ADMINISTRATION (MAY 1997)

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SECTION G

CONTRACT ADMINISTRATION DATA

G.1 ORO G01 CORRESPONDENCE PROCEDURES (SEPT 1999)

All correspondence submitted by the Contractor (except for invoices and reports) shall be subject to the following procedures:

- (a) **Technical Correspondence.** Technical correspondence concerning performance of this contract shall be addressed to the DOE Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contract Specialist.
- (b) **Patents/Technical Data Correspondence.** Correspondence concerning patent and technical data issues shall be addressed to the Assistant Chief Counsel for Intellectual Property, Office of Chief Counsel, USDOE, Post Office Box 2001, Oak Ridge, TN, 37831-8751, with an informational copy to the Contracting Officer and the COR.
- (c) **Non-technical Administrative Correspondence.** All correspondence, other than technical correspondence, shall be addressed to the Contracting Officer or Contract Specialist designated in clause ORO G25, Section G of this contract, with information copies of the correspondence to the DOE COR, and to the DOE Assistant Chief Counsel for Intellectual Property (where patent or technical data issues are involved).
- (d) **Subject Line(s).** All correspondence shall contain a subject line commencing with the contract number, as illustrated below:

"SUBJECT: Contract No. [] (Insert the contract number) [] (Insert subject topic after contract number, e.g., "Request for subcontract placement consent)".

[End of Clause]

G.2 ORO G10 SUBMISSION OF VOUCHERS/INVOICES (SEPT 1999)

- (a) The Contractor shall submit invoices in accordance with the FAR 52.232-7, "Payments Under Time and Material and Labor-Hour Contracts" in Section I of the contract (unless prior written consent from the Contracting Officer for more frequent billing is obtained). The period of performance covered by the invoices should be the same as covered by any required monthly cost management reports.
- (b) The invoice (Standard Form 1034) should include a statement of cost for services rendered. This statement should include, as a minimum, a breakout by cost or price element and task order (if applicable) of all services actually provided by the Contractor, both for the current billing period and cumulatively for the entire contract. The statement of cost must include a certification statement signed by a responsible official of the Contractor. The Contractor shall submit the invoice to the addressees prescribed below:

Original and one copy to:

U.S. Department of Energy
Oak Ridge Operations Office
Oak Ridge Financial Service Center
P.O. Box 6017
Oak Ridge, Tennessee 37831

One copy to:

U.S. Department of Energy
Oak Ridge Operations Office
ATTN: Contracting Officer's Representative
(To be designated by separate letter)
P.O. Box 2001
Oak Ridge, Tennessee 37831

One copy to:

U.S. Department of Energy
Oak Ridge Operations Office
Procurement and Contracts Division
ATTN: (To Be Determined) Contract Specialist
P.O. Box 2001
Oak Ridge, Tennessee 37831

- (c) For task order contracts, in addition to the above submission, the Contractor shall submit one copy of each invoice to the designated contract technical monitor.

[End of Clause]

G.3 ORO G15 BILLING INSTRUCTIONS--TIME AND MATERIALS CONTRACT ALTERNATE I (MAY 1997)

- (a) These instructions are provided for use by contractors in the preparation and submission of vouchers requesting reimbursement for work performed under time and material type contracts. Compliance with these instructions will reduce correspondence and other causes for delay to a minimum and will thus promote prompt payments to the Contractor.
- (b) Preparation of the Statement of Cost (See attached format)
- (1) Statement of Cost shall be completed, making due allowance for the Contractor's cost accounting system.
 - (2) For task order or work assignment contracts, the Contractor shall complete the Statement of Cost for each task order work assignment and a summary for the total invoiced cost.
 - (3) Costs claimed shall be only those recorded costs authorized for billing by the payment provisions of the contract.
 - (4) A separate Statement of Cost should be submitted for each task order/work assignment for claimed overtime costs. A copy of the Contractor's overtime request and Contracting Officer's Representative's approval must accompany the Statement.
 - (5) All claimed subcontractor costs shall be supported by attaching copies of the subcontractor's invoice with the same detail as outlined herein.
 - (6) The DPLH incurred during the current billing period must be shown and the DPLH Summary completed.
 - (7) The certification on the Statement of Cost must be signed by a responsible official of the Contractor.

- (8) Additional supporting data for claimed costs shall be provided in such form and reasonable detail as an authorized representative of the Contracting Officer may require.

[End of Clause]

STATEMENT OF COST - TIME AND MATERIAL CONTRACTS

Contractor: _____ Contract No: _____
 Address: _____ Voucher No: _____
 _____ Task Order No: _____
 _____ Work Assignment No: _____

Contract Amount (face value):

Amount Authorized for
Expenditure (Obligated):

Estimated Cost \$ _____
 All Modifications \$ _____
 Total \$ _____

Basic Contract \$ _____
 Contract to Date \$ _____

| | <u>CURRENT PERIOD</u> | | | <u>CUMULATIVE</u> | |
|---------------|-----------------------|----|------|-------------------|----------------------------------|
| Cost Elements | Hourly Rate | \$ | DPLH | Current Amount | Amount Total Contract \$ DPLH |

Labor Categories

Materials and
Subcontracts:

Total DPLH
 Total Amount

Credit (explain)
 Contractors Share (if any)
 Government's Share

DPLH Summary Per Labor Category (if applicable)

DPLH Authorized _____
 DPLH Incurred _____
 DPLH Balance _____

Cumulative Billing Summary

Cumulative \$ _____ Prime _____ (percent) Subcontract \$ _____ (percent)

CERTIFICATION: I certify that this invoice is correct and in accordance with the terms of the contract and that the costs included herein have been incurred, represent payments made by the Contractor except as otherwise authorized in the payments provisions of the contract, and properly reflect the work performed.

 (Signature) (Title)

Name and address of preparer:

Name: _____
 Company: _____ Telephone _____
 Address: _____

G.4 ORO G20 CONTRACTING OFFICER'S REPRESENTATIVE (COR) (MAY 1997)

The Contracting Officer's Representative will be designated by separate letter and will represent the Contracting Officer in the technical phases of the work. A copy of this designation letter shall be to the Contractor. The COR is not authorized to change any of the terms and conditions of this contract. Changes in the Scope of Work will be made only by the Contracting Officer by properly written modification(s) to the contract. Additional Contracting Officer's Representative(s) for other purposes as

required may be designated in writing by the Contracting Officer.

[End of Clause]

G.5 ORO G25 CONTRACT ADMINISTRATION (MAY 1997)

The contract will be administered by:

U.S. Department of Energy
Oak Ridge Operations Office
Procurement and Contracts Division
ATTN: TBD (Contract Specialist)
P.O. Box 2001
Oak Ridge, Tennessee 37831

Written communication shall make reference to the contract number and shall be mailed to the Contract Specialist designated via separate correspondence to the above address.

[End of Clause]

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 ORO H01 CONSECUTIVE NUMBERING (MAY 1997)

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

[End of Clause]

H.2 ORO H03 TECHNICAL DIRECTION ALTERNATE I (MAY 1997)

- (a) Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
 - (4) (4) Directions to the Contractor which suspend work when clear and present danger exists to workers or members of the public. Clear and present danger is a condition or hazard which could be expected to cause death or serious harm to workers, members of the public, or the environment, immediately or before such condition or hazard can be eliminated through normal procedures. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
 - (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes";

- (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in paragraph (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
 - (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause, Section I of the contract;
 - (2) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter not to perform under the direction and cancel the direction; or
 - (3) (3) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes--Alternate I," Section I of this contract.

[End of Clause]

H.3 ORO H05 MODIFICATION AUTHORITY (MAY 1997)

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) Accept nonconforming work,

- (b) Waive any requirement of this contract, or
- (c) (c) Modify any term or condition of this contract.

.....[End of Clause]

H.4 ORO H15 ORDERING PROCEDURE (MAY 1997) (Revised)

Performance under this contract shall be subject to the following ordering procedure:

- (a) (a) The Contractor shall incur costs under this contract only in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer.
- (b) (b) From time to time during the period of performance of this contract, Task Orders will be approved in writing by the Contracting Officer to the Contractor designating (1) the task to be performed; (2) applicable directives; (3) the schedule of performance; (4) authorized travel; (5) not to exceed estimate of cost and DPLH; and (6) any Government-furnished property. Such Task Orders will specify deliverables and required delivery dates. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, viewgraphs, and other forms of presentation as appropriate. If appropriate, based on 48 CFR 945, property which is Government-furnished or Contractor-acquired will also be listed in the property schedules of this contract as well as in the individual Task Orders.
- (c) (c) Task Orders will be issued on forms specified and provided by the Government. Task Orders will be numbered. A revision to a Task Order will be identified by a numeric designation following the existing Task Order number indicating the revision sequence.
- (d) (d) The Contractor shall submit within ten (10) calendar days, after receipt of each Task Order issued by the Contracting Officer, a one-time Contractor Task Plan. The Task Plan is the Contractor's overall estimate for the completion of the Task Order and shall include the following:
 - (1) Date of commencement of work, and any necessary revision to the schedule of performance.
 - (2) Direct Productive Labor-Hours (DPLH), both straight and overtime, (if authorized), on a monthly basis by applicable labor category, and the total DPLH, including those in paragraph (4) below, estimated to complete the task.
 - (3) The travel and material estimate.
 - (4) (4) An estimate for subcontractors and consultants; including the DPLH, if applicable.

- (5) (5) The total estimated cost for completion of the Task Order.
 - (6) (6) Any other pertinent information.
- (e) (e) The Contractor's Task Plan is subject to the approval of the Contracting Officer. If the approved Task Plan estimate of DPLH and dollars differ from the Task Order, a revised Task Order incorporating the approved Task Plan estimate of DPLH and dollars will be issued. After a Task Order is issued, if any revision becomes necessary to the estimated cost or level of effort, the Contractor shall promptly submit to the Contracting Officer a revised Task Plan with explanatory notes. Revised Task Plans submitted by the Contractor are subject to the approval of the Contracting Officer and a revised Task Order is required if a Revised Task Plan is approved.
- (f) (f) Costs and DPLH shall be tracked by the Contractor for each task order. The contractor shall notify the Contracting Officer in writing whenever it has reason to believe that either the costs or DPLH it expects to incur under a task order in the next 60 days, when added to all costs or DPLH previously incurred, will exceed 75 percent of the total costs or DPLH designated on the task order.
- (g) (g) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—
 - (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the obligated funds specified in the Schedule, and
 - (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the obligated funds specified in the Schedule, until the Contracting Officer notifies the Contractor in writing that additional funding has been obligated.
- (h) (h) Orders shall be issued for completion only within "Term of Contract," Section F of this contract, unless unexercised options to extend the term are available to the Government. In that event, any task period of performance is considered provisional unless the "Term of Contract" is extended.
- (i) (i) This ordering procedure is of a lesser order of precedence than the "Limitation of Government's Obligation (Time-and-Materials and Labor-Hour)," Section B, "Term of Contract," Section F, or "Level of Effort," Section B, clauses of this contract. The Contractor is not authorized to incur costs on Task Orders that are not in compliance with any of those clauses of the contract.

[End of Clause]

H.5 SAFETY, HEALTH AND ENVIRONMENT (MAR 2001)

The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees, members of the public, and the environment, and shall comply with all applicable safety, health and environmental regulations and reporting requirements of DOE. The Contracting Officer shall notify the Contractor in writing of any noncompliance with the clause provisions and corrective action to be taken. The Contractor shall immediately take action upon notice of noncompliance by the Contracting Officer. The Contractor shall submit a safety management plan for review and approval 30 days after award of this contract. If the Contractor fails to comply with regulations or requirements, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption may be issued at the discretion of the Contracting Officer. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

[End of Clause]

H.6 ORO H45 SECURITY QUALIFICATIONS (SEPT 1999)

Clearance Requirements: All Contractor employees shall be "Q", "L" or "BAO" cleared. For employees requiring DOE "Q" or "L" security clearances, the Contractor shall not employ anyone who is not a citizen of the United States. (Clearance-Access authorizations are granted by the DOE pursuant to Title 10, Code of Federal Regulations, Part 710.) Security Badges must be worn properly at all times while working at any of the DOE facilities.

Obtaining Clearances: Prior to submitting individuals for clearance, the Contractor must screen individuals in accordance with an employee screening plan approved by the DOE Contracting Officer's Representative (COR). The certification by the Contractor to the COR of a favorable screening is required prior to employment. The screen shall include verification of identity, citizenship, previous employment and education and the results of credit and law enforcement checks. Clearances will be provided and paid for by DOE. The request for clearance and renewal of clearances must be justified based on actual job performance requirements.

Maintenance of Clearances: Security Badges will be furnished by DOE. Neither the Contractor nor its employees shall ever reassign badges to a different employee. The Contractor shall assure that badges are turned in for employees who are no longer working on this contract, for employees who no longer need access for whatever reason, or when a badge expires.

The Contractor, on a case-by-case basis, will provide its own cleared escorts as needed. The COR/CTM will approve Contractor personnel for escort privileges and provide escort training.

[End of Clause]

H.7 ORO H50 SAFEGUARDS AND SECURITY AWARENESS PROGRAM (MAY 1997)

The Contractor shall establish and maintain a Safeguards and Security Awareness Program acceptable to the Department of Energy (DOE) which satisfies the requirements of DOE Order 470.1. A Safeguards Security Awareness Coordinator must be appointed and will be responsible for ensuring all employees, cleared and uncleared, who are assigned to a DOE facility or who are performing work involving access to classified facilities, classified information, or special nuclear materials are informed of their security responsibilities. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's Safeguards and Security Awareness Program.

[End of Clause]

H.8 ORO H55 QUALITY ASSURANCE SYSTEM ALTERNATE I (MAY 1997) (Revised)

The Contractor shall establish and maintain a formal quality assurance program approved by the Department of Energy (DOE) that satisfies the requirements of DOE Order 414.1A. The quality assurance program shall encompass all areas of performance by the Contractor. If the Contractor has responsibility to perform activities in connection with a nuclear facility, as defined by Title 10, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's approved quality assurance program.

[End of Clause]

H.9 ORO H63 INSURANCE (FEB 2000)

- (a) Except as provided in subparagraph (b) immediately following, the Contractor shall provide and maintain:

| TYPE OF INSURANCE | AMOUNT |
|---|--|
| Worker's compensation | \$100,000 |
| Employer's liability | \$100,000 |
| Comprehensive general liability (bodily injury) | \$500,000 per occurrence |
| Comprehensive automobile liability (bodily injury) | \$200,000 per person and \$500,000 per occurrence |

Comprehensive automobile
liability (property damage)

\$20,000 per occurrence

- (b) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to worker's compensation, the Contractor is qualified pursuant to statutory authority.

[End of Clause]

H.10 ORO H65 CONFIDENTIALITY OF INFORMATION (MAY 1997)

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (1) Information which, at the time of receipt by the Contractor, is in public domain;
- (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

- (b) The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer.

- (d) The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is

given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

- (e) This clause shall flow down to all appropriate subcontracts.

[End of Clause]

H.11 ORO H70 KEY PERSONNEL (DEC 1999) (Revised)

The personnel specified below are considered to be essential to the work being performed hereunder, and shall be assigned full time to this contract and available to begin working on the effective date of this contract. No substitution of Key Personnel is permitted in the first two years of the Contract, absent illness, death, or termination, without prior approval of the Contracting Officer. Prior to the diverting of, or substitution for any of the specified individuals, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. That period of time shall not be less than thirty (30) days. No diversion shall be made by the Contractor without the written consent of the Contracting Officer, provided that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. Whenever, for any reason, one or more of the following employees is unavailable for assignment for work under the contract, the Contractor shall, with the approval of the Contracting Officer, replace such employee with an employee of substantially equal abilities and qualifications with meritorious consideration of increasing opportunity to fully use the talents and capabilities of a diverse workforce. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

NAME

TITLE

[End of Clause]

H.12 DIVERSITY PROGRAM (MAR 2001)

- (a) The Contractor shall develop and implement a Diversity Program in support of the DOE Diversity Initiative. A Diversity Plan covering the full period of performance (base and option periods) shall be submitted to the Contracting Officer with the Contractor's proposal. Once the Diversity Plan is approved by the Contracting Officer, the Contractor shall implement the plan within thirty (30) days. Any revisions to the Diversity Plan after award shall be approved by the Contracting Officer before implementation.
- (b) The Diversity Plan shall address, at a minimum, the Contractor's approach to ensure an effective Diversity Program (including addressing applicable Affirmative Action and Equal Employment Opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; (2)

planned initiatives and activities which demonstrate a commitment to a Diversity program including recruitment strategies for hiring a diverse work force. The Diversity Plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, and (3) subcontracting.

Failure on the part of the Contractor to develop and implement a Diversity Program as required in this clause shall constitute a breach of this contract.

[End of Clause]

H.13 ORO H95 GOVERNMENT PROPERTY ALTERNATE II (SEPT 1999)

- (a) The Government shall provide space, utilities (including telephones and telephone service), equipment, and supplies necessary for the contractor to accomplish the work set forth in Section C of this contract, "Performance-Based Statement of Work."
- (b) Ordering supplies shall be through the ORO Stores. The Contracting Officer's Representative (COR) will approve requisitions prior to ordering. Removal of government-furnished property shall be in accordance with an inventory management program approved by the COR. Government-furnished property shall only be used for the accomplishment of work approved under this contract.
- (c) Equipment repair shall be at ORO expense. The source of maintenance shall be recommended by the contractor and approved by the COR.

[End of Clause]

**H.14 ORO H117 SOFTWARE MADE AVAILABLE FOR CONTRACTOR'S USE (SEPT 1999)
(Revised)**

- (a) The Government, from time to time, may make certain software acquired under license available to the Contractor for its use in the performance of this contract.
- (b) The Contractor recognizes and acknowledges that such software or data contained therein may be proprietary and confidential to a third party.
- (c) The Contractor agrees that it and its employees will not use, copy, disclose, modify, or reverse engineer such software except as permitted by the license and any other terms and conditions under which the software is made available to the Contractor.
- (d) The Contractor is not authorized to violate any software licensing agreement, or to cause the Government to violate any licensing

agreement. If, at any time during the performance of this contract, the Contractor has reason to believe that the utilization of Government furnished software may involve or result in a violation of DOE's licensing agreement by either the Contractor or any end user, the Contractor shall promptly notify the Contracting Officer, in writing, of the pertinent facts and circumstances. Pending direction from the Contracting Officer, the Contractor shall continue to perform to the fullest extent possible without utilizing the software in question.

- (e) Paragraphs (a) through (d) of this clause shall flow down to all subcontracts.

[End of Clause]

H.15 ORO H150 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (MAY 1997)

The Representations, Certifications, and Other Statements of the Offeror, dated 5/11/01, for this contract are, by reference, hereby incorporated in and made a part of this contract.

[End of Clause]

H.16 HUMAN RESOURCES CONSIDERATIONS (MARCH 2001)

In order to minimize unnecessary disruption to the existing workforce, employees shall receive at least a substantially equivalent pay and benefits package in aggregate. The Contractor (including subcontractors, joint venture associates, and/or any other type of teaming partner) shall implement at least the substantially equivalent pay and benefits package as provided in its proposal. In addition, the Contractor shall provide all employees a medical benefits program with no enrollment waiting period or pre-existing conditions exclusion.

The Contractor shall, for purposes of vacations only, credit those employees it hires from Madison Research Corporation under Contract No. DE-AC05-99OR22714 with service credit for any continuous employment with predecessor support service contractors for this work. The credited prior service, if any, will be applied to the Contractor's vacation plan. Prior service will not be credited for any other purpose by the Contractor.

The Contractor is expected to maintain a positive employee relations environment that enables employees to freely raise issues without fear of reprisal, that fosters high productivity, and that effectively resolves employee concerns in a timely, cost effective manner. The Contractor shall develop and implement a comprehensive employee concerns resolutions program.

[End of Clause]

H.17 OBSERVANCE OF LEGAL HOLIDAYS (MARCH 2001)

Government personnel observe the listed days as holidays. The Contractor shall conform to holidays observed by the Government and any other day designated by Federal statutes, Executive Orders, or Presidential proclamation:

- | | |
|---------------------|---------------------------|
| 1. New Year's Day | 2. Martin Luther King Day |
| 3. President's Day | 4. Memorial Day |
| 5. Independence Day | 6. Labor Day |
| 7. Columbus Day | 8. Veterans' Day |
| 9. Thanksgiving Day | 10. Christmas Day |

The Contractor agrees to continue to provide sufficient personnel to perform critical tasks already in operation or scheduled and shall be guided by the instructions issued by the Contracting Officer.

[End of Clause]

H.18 HOURS OF OPERATIONS (MAR 2001)

Operating hours for the Contractor are 7:30 a.m. to 5:00 p.m. Monday through Friday, excluding Federal holidays and emergency closings as determined by the Government. Outside of normal operating hours, on-call personnel will be required to provide timely 24-hour support for network operational and security failures to ensure continuous operation and security of the ORO local area network and wide area network. The ORO networks and network resources will be required to be operational from 6:00 a.m. to 12:00 a.m., Monday through Saturday. Planned outages during these core hours must be scheduled sufficiently in advance (normally no less than 5 business days) to ensure notification to network users. COR approval is required prior to all planned outages during core hours. The Help Desk/Resource Center is required to be staffed during normal operating hours. The Contractor will monitor and manage vacation and sick leave of the personnel supporting this effort and ensure that technical areas have personnel present during normal operating hours and that either the Program Manager or one of the key personnel are present during normal operating hours. COR/contract task monitor approval is required prior to performing overtime work.

If the Oak Ridge Operations Office facility becomes inaccessible to the contractor and no other local office or facility is available, DOE will pay for administrative leave for the necessary duration for the impacted employees. DOE will notify the Program Manager to make notification to its employees in a manner that is consistent with its company policies.

[End of Clause]

H.19 EMPLOYEE TRAINING (MAR 2001)

Contractor's Responsibility: The Contractor shall provide fully qualified and trained personnel from its own resources to support ORO requirements. ORO may provide training assistance at its discretion at no cost to the Contractor. All training must be approved by the COR.

Mandatory Training: The Contractor shall ensure that all new, non-incumbent employees attend security training once within 30 days of beginning performance on this contract and all employees attend at least once annually thereafter. Contractor shall ensure that every employee is instructed to safely and competently perform the work.

[End of Clause]

H.20 COMPUTER SYSTEMS SECURITY (MARCH 2001)

- (a) The Contractor agrees to comply with the applicable DOE Orders and all other regulations and requirements pertaining to computer systems security.
- (b) (b) The Contractor shall immediately issue written notification through the Contracting Officer's Representative to the Department of Energy-Oak Ridge Operations Office Computer Security Site Manager or Computer Protection Program Manager when an employee of the Contractor is no longer working on the contract, or no longer requires access, to Oak Ridge Operations Office computer systems.

[End of Clause]

H.21 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (MARCH 2001)

The Contractor is required to comply with the following in accordance with the applicable DOE Order:

- (a) Notify employees annually of their duty to report directly to the DOE Inspector General (IG) allegations of fraud, waste, abuse, corruption, or mismanagement in DOE programs, operations, funds, or contracts. The Contractor employees should, when appropriate, report directly to the IG any information concerning wrongdoing by employees of DOE, contractors or subcontractors. The Contractor employees should also report to the DOE IG any allegations of reprisals taken against DOE or Contractor employees who have reported fraud, waste, abuse, corruption, or mismanagement to the IG;
- (b) Display and publish the DOE IG hotline telephone number in common areas of buildings, such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies; and
- (c) (c) Publish the DOE IG hotline telephone number in phone books and newsletters.

[End of Clause]

H.22 CONTRACTOR RESPONSIBILITY FOR HANDLING MATERIALS CONTAINING UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI) (MAR 2001)

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this project may contain Unclassified Controlled Nuclear Information (UCNI) as defined in Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such

information from unauthorized dissemination in accordance with DOE Regulations and Directives.

[End of Clause]

H.23 OWNERSHIP OF RECORDS (MARCH 2001)

- (a) Government's Records. Except as is provided in paragraph (b) of this clause and as may be otherwise agreed upon by the Government and the Contractor, all records (including computer databases and software) acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor as directed by the Contracting Officer. The Contractor shall, subject to DOE's security regulations, requirements, and other provisions of the contract, have the right to inspect, and at its own expense, duplicate only those processes, procedures, or records delivered, or to be delivered, to the Government by the Contractor under this contract, or retain duplicates which are in excess of the Government's requirements. However, nothing in this paragraph shall: (1) permit the Contractor to duplicate or retain for its own purposes any official Government documents or proprietary information relating to the Government or to other contractors; (2) constitute any commitment on the part of the Government to retain such records for any period beyond DOE's customary retention periods for the various types of records; and (3) have any effect on the provisions of FAR clause 52.227-14, entitled "Rights in Data – General," Section I of this contract.
- (b) Contractor's Own Records. The following records are considered the property of the Contractor and not within the scope of paragraph (a) above:
- (1) personnel records and files maintained on individual employees, applicants and former employees;
 - (2) privileged or confidential Contractor financial information and correspondence between segments of the Contractor's organization; and
 - (3) Internal legal files.
- (c) Inspection and Audit of Records. All records acquired, or generated by the Contractor under this contract, and in the possession of the Contractor, including those described in paragraph (b) above (exclusive of subparagraph (b)(2) and (b)(3)), shall be subject to inspection and audit by DOE at all reasonable times. The Contractor shall afford the proper DOE facilities for such inspection and audit.

[End of Clause]

H.24 REQUIRED ESCORT-LACK OF FOCI CLEARANCE (MAR 2001)

Until such time that the Contractor receives a Government-issued Foreign, Ownership, Control, or Influence clearance, all Contractor personnel shall be escorted within the DOE complex.

[End of Clause]

H.25 CONTRACTOR'S ORGANIZATION (MAR 2001)

All administrative support for technical personnel required to fulfill the work stated in the contract shall be the responsibility of the Contractor. The Contractor shall designate a full-time on-site Program Manager who will be the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager is responsible for ensuring adequate and timely performance of the work, the supervision and direction of all employees of the contractor, coordination of any personnel changes, and for ensuring the training and instruction of Contractor employees. The Program Manager shall receive and execute, on behalf of the Contractor, technical directions issued by the COR within the terms and conditions of the contract.

The Contractor shall maintain fully qualified personnel to assure continuous coverage of the designated assignments with quality work. Key personnel position vacancies must not exceed ten work days.

In the event of a strike, stoppage of work, or other interference with operations, the Contractor shall furnish qualified personnel who shall continue to report for duty, remain at their stations, and perform assigned tasks in the regular manner.

The Contractor is responsible for ensuring that employees remain cognizant of emerging and proven information technologies and applications.

[End of Clause]

H.26 CLEANLINESS OF THE WORK AREA (DEC 1999)

The Contractor has responsibility for maintaining the areas under its control that are located in Government facilities in an acceptable and orderly manner, and for disposing of waste in accordance with established Department of Energy procedures. Routine janitorial cleaning will be provided by DOE/ORO.

[End of Clause]

H.27 STANDARDS OF CONDUCT (MAR 2001)

The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance, and integrity and shall be responsible for taking disciplinary action with respect to employees as necessary. All Contractor personnel shall comply with the regulations and procedures pertaining to access and use of Government buildings, grounds, vehicles, equipment, and other property. Unofficial work or work unrelated to the contract cannot be performed at Government facilities.

[End of Clause]

H.28 OTHER CONTRACTS (MAR 2001)

The Contractor shall fully cooperate with other DOE contractors and Government employees in the performance of work. The Contractor shall not commit or permit any act that will interfere with the performance of work by another DOE contractor or by Government employees.

[End of Clause]

H.29 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2001)

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

[End of Clause]

H.30 RELEASE OF INFORMATION (MARCH 2001)

Any proposed public release of information including publications, exhibits, or audiovisual productions pertaining to the work required under this contract shall be submitted for approval to the Contracting Officer's Representative prior to actual printing and distribution.

[End of Clause]

H.31 APPROVAL OF EXPENDITURES (MARCH 2001)

Whenever approval or other action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

[End of Clause]

H.32 TRAVEL AND PER DIEM COSTS (MARCH 2001)

Travel and per diem costs shall be allowable in accordance with the clause entitled "Payments Under Time-and Materials and Labor Hour Contracts," Section I of this contract. Costs incurred for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the Federal Travel Regulations maximum per diem rates in effect at the time of travel.

[End of Clause]

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PART II - CONTRACT CLAUSES
SECTION I CONTRACT CLAUSES

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PART II - CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

I.1 52.203-3 GRATUITIES (APR 1984)

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--
 - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
 - (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this contract is terminated under paragraph (a) above, the Government is entitled--
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)
- (c) (c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

[End of Clause]

I.2 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

[End of Clause]

I.3 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

- (a) (a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.
- (b) (b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) (c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

[End of Clause]

I.4 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)

- (a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or

- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c) (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed the subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

[End of Clause]

I.5 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- (a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--
 - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which—
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either—
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

[End of Clause]

I.6 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be—
- (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (3) For cost-plus-award-fee contracts—
 - (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
 - (4) For fixed-price-incentive contracts, the Government may--
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
 - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

[End of Clause]

I.7 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

- (a) Definitions.
- "Agency," as used in this clause, means executive agency as defined in 2.101.
- "Covered Federal action," as used in this clause, means any of the following Federal actions:
- (1) The awarding of any Federal contract.
 - (2) The making of any Federal grant.
 - (3) The making of any Federal loan.
 - (4) The entering into of any cooperative agreement.

- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

- (b) Prohibitions.

- (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (3) The prohibitions of the Act do not apply under the following conditions:
 - (i) Agency and legislative liaison by own employees.
 - (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
 - (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.
 - (ii) Professional and technical services.
 - (A) The prohibition on the use of appropriated funds, in (subparagraph (b)(1) of this clause, does not apply in the case of--
 - 1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or any extension, continuation, renewal, amendment, or modification of

a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

- (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.
- (2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--
 - (i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the

disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

- (d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.
- (e) Penalties.
 - (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

[End of Clause]

I.8 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

- (a) Definitions. As used in this clause--

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as--

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.

"Recovered material", for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as--
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

[End of Clause]

I.9 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

[End of Clause]

I.10 52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.
- (c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--
 - (1) The proposal for the contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the contract, subcontract, or modification; or
 - (4) Performance of the contract, subcontract or modification.
- (d) Comptroller General--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's

directly pertinent records involving transactions related to this contract or a subcontract hereunder.

- (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) **Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- (f) **Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--
 - (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- (g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--
 - (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

[End of Clause]

I.11 52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) (a) The Schedule (excluding the specifications).
- (b) (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

[End of Clause]

I.12 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

- (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--
- (1) The actual subcontract; or
 - (2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
 - (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--
- (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if--
- (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
 - (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

[End of Clause]

I.13 52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items.

(A) If--

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

- (2) (2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

[End of Clause]

I.14 52.216-18 ORDERING (OCT 1995)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date of contract award through contract expiration.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

[End of Clause]

I.15 52.216-19 ORDER LIMITATIONS (OCT 1995)

- (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$1,000, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) Maximum order. The Contractor is not obligated to honor--
- (1) Any order for a single item in excess of \$20,000,000;
 - (2) Any order for a combination of items in excess of \$20,000,000; or
 - (3) A series of orders from the same ordering office within the contract term that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.
- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within five days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

[End of Clause]

I.16 52.216-22 INDEFINITE QUANTITY (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after six months after contract expiration.

[End of Clause]

I.17 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 15 days of contract expiration.

[End of Clause]

I.18 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

- (a) The Government may extend the term of this contract by written notice to the Contractor within ten days upon contract expiration; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five years.

[End of Clause]

I.19 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--
 - (1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
 - (2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
 - (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

[End of Clause]

**I.20 52.219-18 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) CONCERNS (JAN 1997)
ALTERNATE FOR ACQUISITIONS UNDER 19.800 (DEVIATION) (JUN 1998)**

- (a) (a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—
 - (1) (1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and
 - (2) (2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.
- (b) (b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.
- (c) (c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.
- (d) (d) Agreement.
 - (1) A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.
 - (2) The Contractor will notify the DOE Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

[End of Clause]

I.21 52.219-70XX SECTION 8(A) DIRECT AWARD (JUN 1998)

- (a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Memorandum of Understanding between the Small Business Administration (SBA) and the Department of Energy (DOE). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

U.S. Small Business Administration
Tennessee District Office
50 Vantage Way, Suite 201
Nashville, TN 37228
- (b) DOE is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, DOE shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. DOE shall also coordinate with SBA prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.
- (c) The contractor agrees:
 - (1) to notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for

- convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.
- (2) to adhere to the requirements of 52.219-14, "Limitations on Subcontracting".

[End of Clause]

I.22 52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a) (1) The worker is paid or is in an approved work training program on a voluntary basis;
- (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
- (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (c) (c) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

[End of Clause]

I.23 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

[End of Clause]

I.24 52.222-26 EQUAL OPPORTUNITY (FEB 1999)

- (a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.
- (b) During performance of this contract, the Contractor agrees as follows:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
 - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,
 - (i) employment;
 - (ii) upgrading;
 - (iii) demotion;
 - (iv) transfer;
 - (v) recruitment or recruitment advertising;
 - (vi) ayoff or termination;
 - (vii) rates of pay or other forms of compensation; and
 - (viii) selection for training, including apprenticeship.
 - (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
 - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
 - (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
 - (8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
 - (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked

- against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

[End of Clause]

I.25 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a) Definitions. As used in this clause--

"All employment openings" includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

"Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established

"recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Veteran of the Vietnam era" means a person who--

- (1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as --
- (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;

- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

- (c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

- (2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all employment openings with the appropriate office of the State employment service.
- (3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

- (d) (d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

- (e) (e) Postings.

- (1) The Contractor agrees to post employment notices stating--

- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era; and
- (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

- (f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

[End of Clause]

I.26 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

- (a) General.
- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as-
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
 - (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.
- (b) Postings.
- (1) The Contractor agrees to post employment notices stating --
 - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
 - (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.
 - (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

[End of Clause]

I.27 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

- (a) (a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—
- (1) (1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and
- (2) (2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.
- (b) (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."
- (c) (c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.
- (d) (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:
- (1) (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or
- (2) (2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.
- (f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

[End of Clause]

I.28 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

- (a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).
- "Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service Employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional

capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

- (b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.
- (c) Compensation.
- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.
 - (2)
 - (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).
 - (ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.
 - (iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.
 - (iv)
 - (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
 - (B) In the case of a contract modification an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract

under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

- (v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.
- (vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) **Adjustments of Compensation.** If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.
- (d) **Obligation to Furnish Fringe Benefits.** The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.
- (e) **Minimum Wage.** In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.
- (f) **Successor Contracts.** If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that

the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

- (g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.
- (h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.
- (i) Records.
 - (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:
 - (i) For each employee subject to the Act--
 - (A) Name and address and social security number;
 - (B) Correct wage classification or classifications, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation.
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - (ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision(C)(2)(ii) of this clause will fulfill this requirement.
 - (iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.
 - (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
 - (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

- (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.
- (m) Collective Bargaining Agreements Applicable to Service Employee. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173) the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- (o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.
- (p) Contractor's Certification. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

- (q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to this amendment by Pub. L 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision--
- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this

contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

[End of Clause]

I.29 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION.

| Employee Class | Monetary Wage | Fringe Benefits |
|-----------------------------------|------------------|-----------------|
| Computer Support Specialist I | GS-4 Equivalent | |
| Computer Support Specialist II | GS-5 Equivalent | |
| Computer Support Specialist III | GS-6 Equivalent | |
| Technical Writer GS-11 Equivalent | | |
| Computer Operator II | GS-5 Equivalent | |
| Computer Operator III | GS-6 Equivalent | |
| Computer Analyst I | GS-9 Equivalent | |
| Computer Analyst II | GS-11 Equivalent | |
| Computer Analyst III | GS-12 Equivalent | |
| Secretary I | GS-4 Equivalent | |

[End of Clause]

I.30 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS (MAY 1989))

- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351 et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.
- (d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:
 - (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour.

- (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
 - (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

[End of Clause]

I.31 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

- (a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.
- (b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--
- (1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);
 - (2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);
 - (3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);
 - (4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or
 - (5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.
- (c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--
- (1) The Contractor shall notify the Contracting Officer; and
 - (2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

- (d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.
- (e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall--
 - (1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and
 - (2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

[End of Clause]

I.32 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

- (a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- (b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice requirements of Section 304 of EPCRA; the list of Material Data Safety Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

[End of Clause]

I.33 52.223-10 WASTE REDUCTION PROGRAM (AUG 2000)

- (a) Definitions. As used in this clause--
 - "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.
 - "Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.
 - "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.
- (b) Consistent with the requirements of Section 701 of Executive Order 13101, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR part 247).

[End of Clause]

I.34 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

[End of Clause]

I.35 52.224-2 PRIVACY ACT (APR 1984)

- (a) The Contractor agrees to--
 - (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--
 - (i) The systems of records; and
 - (ii) The design, development, or operation work that the contractor is to perform;
 - (2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
 - (3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

- (c)
 - (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
 - (2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
 - (3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

[End of Clause]

I.36 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

- (a) (a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).
- (b) (b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.
- (c) (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

[End of clause]

I.37 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

- (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold; however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

[End of Clause]

I.38 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

- (a) (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) (c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

[End of Clause]

I.39 52.227-3 PATENT INDEMNITY (APR 1984)

- (a) (a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.
- (b) (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made

subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

[End of Clause]

I.40 52.227-14 RIGHTS IN DATA--GENERAL (JUN 1987) (As Modified by DEAR 927.409)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
- (6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.
- (7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--
 - (i) Data first produced in the performance of this contract.
 - (ii) Form, fit, and function data delivered under this contract.
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to--
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this contract.
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.
- (c) Copyright.
 - (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
 - (2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.
 - (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.
- (d) Release, publication and use of data.
 - (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
 - (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
 - (3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel

shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notice specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibition.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to

have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

- (2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

- (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition of this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) [Reserved]

(3) [Reserved]

- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

- (i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

[End of Clause]

I.41 52.227-14 RIGHTS IN DATA--GENERAL (JUN 1987) Alternate I (JUN 1987) (As Modified by DEAR 927.409)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

- (5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
- (6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.
- (7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--
 - (i) Data first produced in the performance of this contract.
 - (ii) Form, fit, and function data delivered under this contract.
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to--
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this contract.
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

- (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants the Government and

others acting in its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

- (2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.
- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data.

- (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notice specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibition.
 - (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of

competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
 - (3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
 - (4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.
- (f) Omitted or incorrect markings.
- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
 - (2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.
- (g) Protection of limited rights data and restricted computer software.
- (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition of this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.
 - (2) [Reserved]
 - (3) [Reserved]
- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.
- (i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

[End of Clause]

I.42 52.227-14 RIGHTS IN DATA--GENERAL (JUN 1987) Alternate II (JUN 1987) (As Modified by DEAR 927.409)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
- (6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.
- (7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--
 - (i) Data first produced in the performance of this contract.
 - (ii) Form, fit, and function data delivered under this contract.
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to--

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this contract.
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

- (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.
- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data.

- (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notice specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibition.
 - (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;

- (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.
- (g) Protection of limited rights data and restricted computer software.
 - (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition of this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.
 - (2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUN 1987)

 - (a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state]
 - (b) This Notice shall be marked on any reproduction of these data, in whole or in part.
(End of notice)
- (3) [Reserved]
- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.
- (i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

[End of Clause]

I.43 52.227-14 RIGHTS IN DATA--GENERAL (JUN 1987) Alternate III (JUN 1987) (As Modified by DEAR 927.409)

- (a) Definitions.
 - (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
 - (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media

in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. For the purposes of this clause, the term does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (5) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of this section if included in this clause.
- (6) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of this section if included in this clause.
- (7) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.
- (8) Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of rights.

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in--
 - (i) Data first produced in the performance of this contract.
 - (ii) Form, fit, and function data delivered under this contract.
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
 - (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Contractor shall have the right to--
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this contract.
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

- (1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.
- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c) and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.
- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(e) Unauthorized marking of data.

- (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notice specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

- (i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibition.
 - (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
 - (2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
 - (3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
 - (4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.
- (f) Omitted or incorrect markings.
- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
 - (2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.
- (g) Protection of limited rights data and restricted computer software.

- (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition of this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.
- (2) [Reserved]
- (3) (i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUN 1987)

- (a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.
- (b) This computer software may be--
- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and
 - (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.
- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.
(End of notice)

- (ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE
SHORT FORM (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract _____, if appropriate) with _____ (name of Contractor and subcontractor).
(End of notice)

- (iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished--rights reserved under the Copyright Laws of the United States."

- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.
- (i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

[End of Clause]

I.44 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on page's ___(none)___, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated ___5/07/01___ upon which this contract is based.

[End of Clause]

I.45 52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (MAR 2000)

The Government will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) Hourly rate.

- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) below, pay the voucher as approved by the Contracting Officer.
- (2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) below.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) Materials and subcontracts.

- (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.
- (2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and

administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

- (3) The Government will reimburse the Contractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased items or services.
- (4)
 - (i) The Government will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with paragraph (b)(5) of this clause.
 - (ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for items and services purchased directly for the contract only when the Contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor--
 - (A) In accordance with the terms and conditions of a subcontract or invoice; and
 - (B) Ordinarily prior to the submission of the Contractor's next payment request to the Government.
 - (iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.
- (5) To the extent able, the Contractor shall--
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

- (c) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

- (d) Ceiling price. The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

- (e) Audit. At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g)) of this section, the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.
- (f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
 - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
 - (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.
- (g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

[End of Clause]

I.46 52.232-17 INTEREST (JUN 1996)

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

[End of Clause]

I.47 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

[End of Clause]

I.48 52.232-25 PROMPT PAYMENT (MAR 2001)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101 and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments

(1) Due Date.

- (i) Except as indicated in subparagraph (a)(2) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:
 - (A) The 30th day after the designated billing office has received a proper invoice from the Contractor (except as provided in subdivision (a)(1)(ii) of this clause).
 - (B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
- (ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments.

- (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--
 - (A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.
 - (B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.
 - (C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.
 - (D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.
 - (ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.
- (3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraph (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.
- (i) Name and address of the Contractor.
 - (ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)
 - (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
 - (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
 - (v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
 - (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.
 - (viii) Any other information or documentation required by the contract (such as evidence of shipment).
 - (ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.
- (4) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.
- (i) A proper invoice was received by the designated billing office.
 - (ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
 - (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was Government and the Contractor.
- (5) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.
- (i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.
 - (ii) The following periods of time will not be included in the determination of an interest penalty:
 - (A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

- (B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.
 - (C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.
 - (iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.
 - (iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.
- (6) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(5) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.
- (7) Additional interest penalty.
- (i) A penalty amount, calculated in accordance with paragraph (a)(7)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--
 - (A) Is owed an interest penalty of \$1 or more;
 - (B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and
 - (C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.
 - (ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--
 - (1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;
 - (2) Attach a copy of the invoice on which the unpaid late payment interest was due; and
 - (3) State that payment of the principal has been received, including the date of receipt.(B) Demands must be postmarked on or before the 40th day after payment was made, except that--
 - (1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or
 - (2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.
 - (iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--
 - (1) The additional penalty shall not exceed \$5,000;
 - (2) The additional penalty shall never be less than \$25; and
 - (3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.(B) If the interest penalty ceases to accrue in accordance with the limits stated in paragraph (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in paragraph (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments--

- (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.
- (2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.
- (3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

[End of Clause]

I.49 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

[End of Clause]

I.50 52.232-34 PAYMENT BY ELECTRONIC FUNDS TRANSFER--OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment.

- (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request the Government to extend payment due dates until such time

as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) Mandatory submission of Contractor's EFT information.

- (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by August 19, 2001. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).
- (2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment.

- 1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers.

- (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the

payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.
- (i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.
- (j) EFT information. The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.
 - (1) The contract number (or other procurement identification number).
 - (2) The Contractor's name and remittance address, as stated in the contract(s).
 - (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
 - (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
 - (5) The Contractor's account number and the type of account (checking, saving, or lockbox).
 - (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
 - (4) (4) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

[End of Clause]

I.51 52.233-1 DISPUTES (DEC 1998) ALTERNATE I (DEC 1991)

- (a) This contract is subject to the Contracts Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- (b) Except as provided in the Act, all disputes arising under or related to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the

adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
 - (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
 - (A) Exceeding \$100,000; or
 - (B) Regardless of the amount claimed, when using:
 - (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).
 - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
 - (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
 - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
 - (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
 - (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
 - (h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
 - (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

[End of Clause]

I.52 52.233-3 PROTEST AFTER AWARD (AUG 1996)

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the request at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

[End of Clause]

I.53 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

[End of Clause]

I.54 52.237-3 CONTINUITY OF SERVICES (JAN 1991)

- (a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- (c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

[End of Clause]

I.55 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

- (a) (a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.
- (b) (b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.
- (c) (c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

[End of Clause]

I.56 52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

[End of Clause]

I.57 52.243-3 CHANGES--TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
- | | | |
|-----|-----|---|
| (1) | (1) | Description of services to be performed. |
| (2) | (2) | Time of performance (i.e., hours of the day, days of the week, etc.). |
| (3) | (3) | Place of performance of the services. |
| (4) | (4) | Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications. |
| (5) | (5) | Method of shipment or packing of supplies. |
| (6) | (6) | Place of delivery. |
| (7) | (7) | Amount of Government-furnished property. |
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:
- | | |
|-----|-----------------------|
| (1) | Ceiling price. |
| (2) | Hourly rates. |
| (3) | Delivery schedule. |
| (4) | Other affected terms. |
- (c) The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

[End of Clause]

I.58 52.244-2 SUBCONTRACTS (AUG 1998)

- (a) Definitions. As used in this clause--

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- (b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.
- (c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that--

- (1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or
- (2) Is fixed-price and exceeds--

- (i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or
- (ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting--
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination--

- (1) Of the acceptability of any subcontract terms or conditions;

- (2) Of the allowability of any cost under this contract; or
 - (3) To relieve the Contractor of any responsibility for performing this contract.
- (h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
 - (i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.
 - (j) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.
 - (k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

[End of Clause]

I.59 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2001)

- (a) Definition. As used in this clause--
 "Commercial item", has the meaning contained in the clause at 52.202-1, Definitions.
 "Subcontract", includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c)
 - (1) The following clauses shall be flowed down to subcontracts for commercial items.
 - (i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246).
 - (iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).
 - (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

[End of Clause]

I.60 52.246-25 LIMITATION OF LIABILITY--SERVICES (FEB 1997)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

[End of Clause]

I.61 52.248-1 VALUE ENGINEERING (FEB 2000)

- (a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates of paragraph (f) below.
- (b) Definitions.

"Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include--

 - (1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;
 - (2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and
 - (3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either--

- (1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or
- (2) To the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices has been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

"Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

"Unit," as used in this clause, means the item or task to which the Contracting Office and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that--

- (1) Requires a change to this, the instant contract, to implement; and
- (2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change--
 - (i) In deliverable end item quantities only;
 - (ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

- (c) **VECP Preparation.** As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
- (1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.
 - (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
 - (3) Identification of the unit to which the VECP applies.
 - (4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.
 - (5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.
 - (6) A prediction of any effects the proposed change would have on collateral costs to the agency.
 - (7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
 - (8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.
- (d) **Submission.** The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.
- (e) **Government action.**
- (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.
 - (2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.
 - (3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.
- (f) **Sharing rates.** If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon--

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS
(Figures in Percent)

| | | Sharing Arrangement | | | |
|---|---------|--------------------------|--------------------------------------|------------------------------------|---|
| | | Incentive (voluntary) | | Program Requirement (Mandatory) | |
| Contract Type | Instant | Contract Rate | Concurrent and Future Contract | Instant Contract Rate | Concurrent and Future Contract Rate |
| Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts) | *50 | *50 | 25 | 25 | |
| Incentive (fixed-price or cost) (other than award fee) | ** | *50 | ** | 25 | |
| Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts) | ***25 | ***25 | 15 | 15 | |

*The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.

**Same sharing arrangement as the contract's profit or fee adjustment formula.

***The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

- (g) Calculating net acquisition savings. (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.
- (2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.
- (3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.
- (4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.
- (h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--
- (1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;
- (2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;
- (3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

- (4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and
 - (5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:
 - (i) Fixed-price contracts--add to contract price.
 - (ii) Cost-reimbursement contracts--add to contract fee.
- (i) Concurrent and future contract savings.
- (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.
 - (2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by--
 - (i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and
 - (ii) Multiplying the result by the Contractor's sharing rate.
 - (3) The Contracting Officer shall calculate the Contractor's share of future contract savings by--
 - (i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;
 - (ii) Subtracting any Government costs or negative instant contract savings not yet offset; and
 - (iii) Multiplying the result by the Contractor's sharing rate.
 - (4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.
 - (5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:
 - (i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.
 - (ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.
- (j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.
- (k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.
- (l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering

incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

- (m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:
"These data, furnished under the Value Engineering clause of contract....., shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations." If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation).

[End of Clause]

I.62 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP 1996) Alternate IV (SEP 1996)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--
- (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) (1) Stop work as specified in the notice.
 - (2) (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
 - (5) (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
 - (6) (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling

acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

- (7) (7) Complete performance of the work not terminated.
 - (8) (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount determined as follows:
- (1) If the termination is for the convenience of the Government, include--
 - (i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;
 - (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;
 - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

- (iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and
 - (v) The reasonable costs of settlement of the work terminated, including--
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary for the protection, or disposition of the termination inventory.
- (2) If the termination is for default of the Contractor, include the amounts computed under subparagraph (h)(1) of this clause but omit--
 - (i) Any amount for preparation of the Contractor's termination settlement proposal; and
 - (ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) The amount finally determined on an appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted--
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.
- (m)
 - (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

[End of Clause]

I.63 52.249-14 EXCUSABLE DELAYS (APR 1984)

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (f) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--
- (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

[End of Clause]

I.64 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

[End of Clause]

I.65 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

[End of Clause]

I.66 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

[End of Clause]

I.67 52.202-1 DEFINITIONS (OCT 1995) (As Modified by 952.202-1) (MAR 1985)

- (a) "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means--
 - (1) Any item other than real property, that is of a type customarily used for nongovernmental purposes and that--
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services--
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

- (7) Any item, combination of items, or service referred to in subparagraph (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
 - (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Federal Government as part of an end item or of another component.
- (e) "Nondevelopmental item" means--
- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.
- (h) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.

[End of Clause]

I.68 952.204-2 SECURITY (SEP 1997)

- (a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.

- (d) Definition of restricted data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) Definition of formerly restricted data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means:
- (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or
 - (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).
- (j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

[End of Clause]

I.69 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government

Original Classifiers. Other personnel (Government or contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflects decisions made by Federal Government Original Classifiers.

The contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/ declassification guidance, but whose sensitivity appears to warrant classification, the contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

[End of Clause]

**I.70 952.204-74 FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR (APR 1984)
DEVIATION (APR 1999)**

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (b) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.
- (c) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the contractor to avoid or mitigate foreign influences.
- (d) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or special nuclear material.
- (e) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of

Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

- (f) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (g) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.
- (h) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

[End of Clause]

I.71 952.208-70 PRINTING (APR 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8" by 11 inches one side only, one color. A requirement is defined as a single publication document.

- (1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.
- (2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.
- (3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.
- (4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

[End of Clause]

I.72 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

- (a) Purpose. The purpose of this clause is to ensure that the contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to

as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

- (i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the contractor's performance of work under this contract for a period of three years after the completion of this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for advisory and assistance services.
- (ii) If, under this contract, the contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

- (i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not:
 - (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

- (1) The contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the contracting officer. Such disclosure may include a description of any action which the contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
- (2) In the event that the contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the contracting officer, DOE may terminate this contract for default.

- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer may grant such a waiver in writing.

[End of Clause]

I.73 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

[End of Clause]

I.74 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

- (a) Definition.
"Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors with respect to work under its contract with the Department at the time the particular position is available.
- (b) Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, the contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

[End of Clause]

I.75 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AUG 1992)

- (a) (a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) (b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) (c) Subcontracts.

- (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.
- (2) (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
- (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

[End of Clause]

I.76 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999)

- (a) The contractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS [Return to Table of Contents](#)SECTION J LIST OF ATTACHMENTSJ.1 ORO J01 LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS (MAY 1997)J.2..... ORO J10 REPORT DISTRIBUTION ADDRESSEE LIST (MAY 1997)ATTACHMENT C**PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS****SECTION J****LIST OF ATTACHMENTS**J.1 ORO J01 LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS (MAY 1997)

| <u>Attachment No.</u> | <u>No. of Pages</u> | <u>Attachment Title</u> |
|-----------------------|---------------------|-----------------------------|
| <u>A</u> | 5 | Reporting Requirements |
| Checklist | | |
| <u>B</u> | 11 | Acronym List |
| <u>C</u> | 1 | Current Department of Labor |
| Wage Determination* | | |

J.2 ORO J10 REPORT DISTRIBUTION ADDRESSEE LIST (MAY 1997)

A. U.S. Department of Energy
Oak Ridge Operations Office
Procurement and Contracts Division
ATTN: Contract Specialist
P.O. Box 2001
Oak Ridge, Tennessee 37831

Number of Copies: 1

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ATTN: Office of Assistant Chief Counsel for Intellectual Property
P.O. Box 2001
Oak Ridge, Tennessee 37831-8751

Number of Copies: 1

[End of Clause]

| Planning and Reporting Requirements | | | | Frequency | Distribution |
|---|--|--|--|---|--------------|
| Management Plan (requires COR approval) | | | | One Month After Award | A,B |
| Status Report | | | | Weekly | A,B |
| Labor Plan | | | | One Month After Award | A,B |
| Cost Plan | | | | One Month After Award | A,B,D |
| Milestone Schedule/Status | | | | Monthly | B |
| Labor Management Report | | | | Monthly | A,B |
| Cost Management Report | | | | Monthly | A,B,D |
| Conference Record | | | | As Required | B |
| Hot Line Report | | | | As Required | B |
| Task Plans | | | | As Required | A,B |
| Reports of Special Studies | | | | As Required | B |
| System Utilization/Performance | | | | Weekly | B |
| Quality Control Program | | | | Once After Award | A,B |
| Quarterly Employment Report | | | | Quarterly | B,C |
| Payroll and Residence Report | | | | Semi-Annually | B,C |
| Diversity Plan | | | | With Proposal and Revisions As Required | A,B |
| Safety Management Plan | | | | Once After Award | A,B |
| Summary Report | | | | Yearly | D |
| Quarterly Review | | | | Quarterly | D |

MANAGEMENT PLAN (Submitted one month after award)

The "Management Plan" describes the offeror's approach to performing the effort and producing the products identified in the contractual agreement, and the technical, schedule, cost, and financial management control systems to be used to manage that performance. It must be sufficiently comprehensive to describe the planned execution, management, and results of the work. The offeror may attach existing materials (e.g., company personnel management procedures), as appropriate. The plan should include:

- (a) A brief consolidated executive summary
- (b) An overall description of planned accomplishments, including technical, schedule, cost and financial

results, and how they interrelate

- (c) A description of the management systems employed to control cost and schedule performance, including a discussion of the organization components responsible for cost and schedule management, and an explanation of planning, budgeting, accounting, and analytical procedures and systems
- (d) A brief background that demonstrates the offeror's understanding of the problems, both management and technical, associated with the statement of work
- (e) A description of the technical support systems and controls employed to enable and control the planned technical results, including systems engineering, configuration management, quality assurance, safety engineering, environmental engineering, data processing, and any other systems, as applicable
- (f) A description of the administrative support systems and controls employed to facilitate execution of the contract. The description should include an overview of those systems that support general corporate efforts but which are not dedicated to specific project activities

LOCAL 999.J07 LABOR PLAN (JUN 1986) (submitted one month after contract award)

The "Labor Plan" (DOE F 1332.4) establishes the planned utilization of labor for the base term plus option periods and addresses the total labor to be utilized to perform the work. It itemizes labor requirements for prior fiscal years, the current fiscal year by month, and future fiscal years by task order until contract completion.

LOCAL 999.J08 COST PLAN (JUN 1986) (submitted one month after contract award)

The "Cost Plan" (DOE F 1332.7) establishes the plan for accruing total costs for the life of the contractual agreement. The time-phased baseline plan establishes the basis for the measurement of actual cost accumulation and provides basic information for updating and forecasting budget requirements. The "Cost Plan" itemizes accrued costs for prior fiscal years, the current fiscal year by month, and future fiscal years by task order until completion of the contractual agreement.

LOCAL 999.J05 SUMMARY REPORT (JUN 1986) (annually)

The "Summary Report" (DOE F 1332.2) provides a concise, top-level summary of schedule, labor, and cost performance against the baseline plans. Most data are presented graphically. The format permits rapid visual comparison of schedule, labor, and cost data. There are three segments: a cost status graph, a labor status graph, and a milestone chart. The cost and labor graphs are cumulative presentations. Planned and actual numerical data presented are for the periods specified. Labor and cost variances are shown on a monthly and a cumulative basis.

QUARTERLY REVIEW (quarterly)

The "Quarterly Review" provides a top-level summary of activities, accomplishments, failures, and lessons learned by task order and by functional areas, i.e. Software Engineering and Systems Management, End User Support and Related Administration Support, Computer/Network Operations for the reporting period. Most data are presented graphically. The report may be delivered as an oral presentation with hard copy handouts or as a formal written document.

STATUS REPORT (weekly)

The "Status Report" is a chronicle of activities continued, begun and/or completed during the reporting period by task order and by functional areas, i.e. Software Engineering and Systems Management, End User Support and Related Administration Support, Computer/Network Operations.

MILESTONE SCHEDULE/STATUS REPORT (monthly)

The "Milestone Schedule/Status Report" is the Contractor project manager's concise narrative assessment of the status of the work being performed under the contractual agreement. The report highlights changes to objectives, changes to technical approach, task variances including causative factors and actions taken or proposed to resolve to resolve them, and factors with potential for causing significant variances in the future. Project progress may also be highlighted. The report identifies open projects requiring action by DOE or the contractor as well as a summary assessment of the current situation including a forecast of the near future and the expected impact on project accomplishment.

LOCAL 999.J10 LABOR MANAGEMENT REPORT (JUNE 1986) (monthly)

The "Labor Management Report" (DOE F 1332.8) is a periodic report of the status of labor resource utilization to be compared with the "Labor Plan." Both DOE and Contractor management use it for monitoring, controlling, and replanning allocation of labor resources. This report contains actual labor expended for the reporting and prior periods and estimates of labor usage for the remainder of the fiscal year and the balance of the effort.

LOCAL 999.J11 COST MANAGEMENT REPORT (JUN 1986) (monthly)

The "Cost Management Report" (DOE F 1332.9) is a periodic report of the cost status of the contractual agreement to be completed with the "Cost Plan." Both DOE and Contractor management use it for monitoring, controlling, and planning allocation of dollar resources. This form contains actual cost status for the reporting and prior periods and estimates of dollar costs for the remainder of the fiscal year and the balance of the effort.

LOCAL 999.J12 CONFERENCE RECORD (JUN 1986) (as required)

The "Conference Report" documents for the DOE Contracting Officer's Representative (COR), DOE Contracting Officer, and the Contractor, an understanding of significant decisions, direction or redirection, or required actions resulting from meetings with DOE representatives. It is required for any meeting, conference, or phone conversation in which a decision is made that may change the schedule, labor, cost, or technical aspects of the contractual agreement or the approved baseline plans. The report shall contain the following information as applicable.

- (a) Report title ("Conference Record"), number, and the date prepared
- (b) Contract title and number, and the Contractor's name and address
- (c) Date of meeting or telephone conversation, with a list of those involved and their titles
- (d) Subject (s) discussed, decisions reached, and directions given
- (e) Variances from previous directions and conclusions
- (f) Required actions
- (g) Distribution
- (h) Signature of preparer

HOT LINE REPORTS (as required)

(a) The "Hot Line" Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; achievement or failure to achieve an important technical objective; or any requirement for quickly documented direction or redirection. The report is submitted by the most rapid means available, usually electronic, and should confirm telephone conversations with DOE representatives. Identification as a "Hot Line Report" serves notice at each link in the delivery chain that speed in handling is required. Unless otherwise agreed by the parties involved, DOE is expected to take action and respond in a similarly speedy manner. The report should include:

- 1. Contractor's name and address
 - 2. Contract title and number
 - 3. Date
 - 4. Brief statement of problem or event
 - 5. Anticipated impacts
 - 6. Corrective action taken or recommended
- (b) Hot Line reports shall document the incidents listed below, in addition to those required by the Uniform Reporting System (i.e., paragraph a above):
- 1. Any fatal, imminently fatal injury, accident, or any incident involving hospitalization of five or more persons is to be immediately reported.
 - 2. Any significant environmental permit violation is to be reported as soon as possible, but within 24 hours of incident.
 - 3. Other incidents that have the potential for high visibility in the media are to be reported as quickly as possible, but within 24 hours.
 - 4. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but within 24 hours of the failure.
 - 5. Any unplanned event which is anticipated to cause a schedule slippage or cost increase significant to the project is to be reported within 24 hours.
- (c) The requirement to submit Hot Line Reports for the incidents identified in b1, b2, or b3 is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public.
- (d) When an incident is reported, in accordance with b4, or b5, the Contractor shall conduct an investigation of its cause and make an assessment of the adequacy of resultant action. A written report is required on a schedule to be established at the time of the initial report.

- (e) When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first, if possible, by the ORO Public Information Officer and coordinated with the COTR.

TASK PLANS (as required)

"Task Plans" are prepared for each task order written under the contract. The Task Plan describes the Contractor's approach to performing the work and producing the products identified in task orders. It must be sufficiently comprehensive to describe the planned execution, management, and results of the work. The plan should include:

- (a) An overall description of planned accomplishments, including technical, schedule, cost and financial results
- (b) A brief background that demonstrates the offeror's understanding of the problems, both management and technical, associated with the statement of work
- (c) A description of the administrative support systems and controls employed to facilitate execution of the task order
- (d) A staffing plan to include the skill mix and level of personnel assigned to perform the work defined under the task order and plans to provide coverage during vacations

REPORTS OF SPECIAL STUDIES (as required)

"Special Studies Reports" are developed at the direction and in accordance with instructions from the COR or the COR's designated representative.

SYSTEM UTILIZATION/PERFORMANCE (weekly)

The "System Utilization/Performance Report" documents the activity on the network over the reporting period. The report should also summarize connectivity; email, server, firewall health issues and performance issues; and network intrusions. The report will describe problems resulting in network unavailability, what was done to correct the problems or suggestions for resolving the problems.

QUALITY CONTROL PROGRAM (once after award)

The "Quality Control Program Report" documents the Contractor's comprehensive program of inspections and monitoring actions used to fulfill the terms of the contract.

QUARTERLY EMPLOYMENT REPORT (quarterly)

The "Quarterly Employment Report" summarizes the number of employees that live in Oak Ridge and those that live outside the area.

PAYROLL AND RESIDENCE REPORT (semi-annually)

The "Payroll and Residence Report" summarizes the number of employees, the county of residence, and the total payroll.

DIVERSITY PLAN (with proposal)

See Clause H.12 of this document.

SAFETY MANAGEMENT PLAN (once after award and updated quarterly)

The "Safety Management Plan" documents the Contractor's procedures for handling any known safety issues. The Plan is routinely updated to address additional safety issues.

ACRONYM LIST

Section J -- Attachment C

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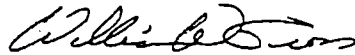
3/23/01

The following acronyms are used throughout this document:

| | |
|--------|---|
| ADP | Automated Data Processing |
| CMG | Computer Management Group |
| CO | Contracting Officer |
| COR | Contracting Officer's Representative |
| COTS | Commercial Off The Shelf |
| DEAR | Department of Energy Acquisition Regulation |
| DOE | Department of Energy |
| DOEnet | The Department of Energy's Intranet |
| DOL | Department of Labor |
| DPLH | Direct Productive Labor Hours |
| FAR | Federal Acquisition Regulation |
| FOCI | Foreign Ownership, Control, or Influence |
| IG | Inspector General |
| HQ | Department Of Energy Headquarters |
| IM | Information Management |
| IRMD | Information Resources Management Division |
| IT | Information Technology |
| LLC | Limited Liability Company |
| OCI | Organization Conflict of Interest |
| OMB | Office of Management and Budget |
| ORO | Oak Ridge Operations Office |
| OT | Over Time |
| P.L. | Public Law |
| RFP | Request for Proposal |
| QASP | Quality Assurance Surveillance Plan |
| SEC | Securities and Exchange Commission |
| SF | Standard Form |
| TAS | Technical Architecture Specification |
| TSCM | Technical Surveillance Countermeasures |
| UCNI | Unclassified Controlled Nuclear Information |
| VECP | Value Engineering Change Proposal |

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REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor



William W. Gross
Director

Division of
Wage Determinations

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON, D.C. 20210

Wage Determination No.: 1994-2493
Revision No.: 13
Date of Last Revision: 09/18/2000

State: Tennessee

Area: Tennessee Counties of Anderson, Blount, Campbell, Claiborne, Cumberland, Fentress, Grainger, Hamblen, Jefferson, Knox, Loudon, Monroe, Morgan, Pickett, Roane, Scott, Sevier, Union

** Fringe Benefits Required Follow the Occupational Listing **

| OCCUPATION TITLE | MINIMUM WAGE RATE |
|--|-------------------|
| Administrative Support and Clerical Occupations | |
| Accounting Clerk I | 7.34 |
| Accounting Clerk II | 8.02 |
| Accounting Clerk III | 8.71 |
| Accounting Clerk IV | 9.74 |
| Court Reporter | 9.80 |
| Dispatcher, Motor Vehicle | 9.80 |
| Document Preparation Clerk | 8.82 |
| Duplicating Machine Operator | 8.82 |
| Film/Tape Librarian | 9.65 |
| General Clerk I | 6.11 |
| General Clerk II | 7.25 |
| General Clerk III | 8.82 |
| General Clerk IV | 9.90 |
| Housing Referral Assistant | 11.87 |
| Key Entry Operator I | 7.64 |
| Key Entry Operator II | 10.27 |
| Messenger (Courier) | 6.11 |
| Order Clerk I | 7.56 |
| Order Clerk II | 10.58 |
| Personnel Assistant (Employment) I | 6.11 |
| Personnel Assistant (Employment) II | 7.25 |
| Personnel Assistant (Employment) III | 8.82 |
| Personnel Assistant (Employment) IV | 9.90 |
| Production Control Clerk | 11.87 |
| Rental Clerk | 9.65 |
| Scheduler, Maintenance | 9.65 |
| Secretary I | 9.65 |
| Secretary II | 9.80 |
| Secretary III | 11.87 |
| Secretary IV | 13.21 |
| Secretary V | 14.61 |
| Service Order Dispatcher | 9.65 |

| | |
|-----------------------------------|-------|
| Stenographer I | 8.59 |
| Stenographer II | 9.65 |
| Supply Technician | 13.21 |
| Survey Worker (Interviewer) | 9.80 |
| Switchboard Operator-Receptionist | 7.71 |
| Test Examiner | 9.80 |
| Test Proctor | 9.80 |
| Travel Clerk I | 8.67 |
| Travel Clerk II | 9.22 |
| Travel Clerk III | 9.94 |
| Word Processor I | 7.89 |
| Word Processor II | 10.25 |
| Word Processor III | 11.46 |

Automatic Data Processing Occupations

| | |
|----------------------------------|-------|
| Computer Data Librarian | 8.56 |
| Computer Operator I | 8.56 |
| Computer Operator II | 9.57 |
| Computer Operator III | 12.94 |
| Computer Operator IV | 14.39 |
| Computer Operator V | 15.93 |
| Computer Programmer I (1) | 12.48 |
| Computer Programmer II (1) | 15.47 |
| Computer Programmer III (1) | 16.66 |
| Computer Programmer IV (1) | 20.16 |
| Computer Systems Analyst I (1) | 17.05 |
| Computer Systems Analyst II (1) | 20.62 |
| Computer Systems Analyst III (1) | 25.51 |
| Peripheral Equipment Operator | 8.56 |

Automotive Service Occupations

| | |
|--------------------------------------|-------|
| Automotive Body Repairer, Fiberglass | 13.79 |
| Automotive Glass Installer | 12.53 |
| Automotive Worker | 12.53 |
| Electrician, Automotive | 13.17 |
| Mobile Equipment Servicer | 11.24 |
| Motor Equipment Metal Mechanic | 13.79 |
| Motor Equipment Metal Worker | 12.53 |
| Motor Vehicle Mechanic | 13.79 |
| Motor Vehicle Mechanic Helper | 10.56 |
| Motor Vehicle Upholstery Worker | 11.88 |
| Motor Vehicle Wrecker | 12.53 |
| Painter, Automotive | 13.17 |
| Radiator Repair Specialist | 12.53 |
| Tire Repairer | 10.86 |
| Transmission Repair Specialist | 13.79 |

Food Preparation and Service Occupations

| | |
|-------|-------|
| Baker | 10.55 |
|-------|-------|

| | |
|---------------------|-------|
| Cook I | 9.46 |
| Cook II | 10.55 |
| Dishwasher | 7.04 |
| Food Service Worker | 7.04 |
| Meat Cutter | 10.55 |
| Waiter/Waitress | 7.79 |

Furniture Maintenance and Repair Occupations

| | |
|-----------------------------|-------|
| Electrostatic Spray Painter | 15.48 |
| Furniture Handler | 10.90 |
| Furniture Refinisher | 15.48 |
| Furniture Refinisher Helper | 12.42 |
| Furniture Repairer, Minor | 13.93 |
| Upholsterer | 15.48 |

General Services and Support Occupations

| | |
|------------------------------|-------|
| Cleaner, Vehicles | 7.05 |
| Elevator Operator | 7.05 |
| Gardener | 9.46 |
| House Keeping Aid I | 6.30 |
| House Keeping Aid II | 7.05 |
| Janitor | 7.05 |
| Laborer, Grounds Maintenance | 7.79 |
| Maid or Houseman | 6.30 |
| Pest Controller | 10.00 |
| Refuse Collector | 7.05 |
| Tractor Operator | 8.88 |
| Window Cleaner | 7.79 |

Health Occupations

| | |
|---|-------|
| Dental Assistant | 10.93 |
| Emergency Medical Technician (EMT)/Paramedic/Ambulance Driver | 10.93 |
| Licensed Practical Nurse I | 8.71 |
| Licensed Practical Nurse II | 9.77 |
| Licensed Practical Nurse III | 10.93 |
| Medical Assistant | 9.77 |
| Medical Laboratory Technician | 9.77 |
| Medical Record Clerk | 9.77 |
| Medical Record Technician | 13.54 |
| Nursing Assistant I | 7.10 |
| Nursing Assistant II | 7.89 |
| Nursing Assistant III | 8.71 |
| Nursing Assistant IV | 9.77 |
| Pharmacy Technician | 12.19 |
| Phlebotomist | 9.77 |
| Registered Nurse I | 13.54 |
| Registered Nurse II | 16.57 |
| Registered Nurse II, Specialist | 16.57 |
| Registered Nurse III | 20.05 |

| | |
|-----------------------------------|-------|
| Registered Nurse III, Anesthetist | 20.05 |
| Registered Nurse IV | 24.02 |

Information and Arts Occupations

| | |
|-------------------------|-------|
| Audiovisual Librarian | 13.20 |
| Exhibits Specialist I | 15.13 |
| Exhibits Specialist II | 18.74 |
| Exhibits Specialist III | 22.93 |
| Illustrator I | 15.13 |
| Illustrator II | 18.74 |
| Illustrator III | 22.93 |
| Librarian | 14.61 |
| Library Technician | 9.80 |
| Photographer I | 11.50 |
| Photographer II | 15.13 |
| Photographer III | 18.74 |
| Photographer IV | 22.95 |
| Photographer V | 27.74 |

Laundry, Dry Cleaning, Pressing and Related Occupations

| | |
|--|------|
| Assembler | 6.56 |
| Counter Attendant | 6.56 |
| Dry Cleaner | 8.60 |
| Finisher, Flatwork, Machine | 6.56 |
| Presser, Hand | 6.56 |
| Presser, Machine, Drycleaning | 6.56 |
| Presser, Machine, Shirts | 6.56 |
| Presser, Machine, Wearing Apparel, Laundry | 6.30 |
| Sewing Machine Operator | 9.26 |
| Tailor | 9.90 |
| Washer, Machine | 7.25 |

Machine Tool Operation and Repair Occupations

| | |
|----------------------------------|-------|
| Machine-Tool Operator (Toolroom) | 11.46 |
| Tool and Die Maker | 13.70 |

Material Handling and Packing Occupations

| | |
|--|-------|
| Forklift Operator | 8.83 |
| Fuel Distribution System Operator | 13.22 |
| Material Coordinator | 10.60 |
| Material Expediter | 10.60 |
| Material Handling Laborer | 7.04 |
| Order Filler | 8.53 |
| Production Line Worker (Food Processing) | 9.42 |
| Shipping Packer | 8.60 |
| Shipping/Receiving Clerk | 8.60 |
| Stock Clerk (Shelf Stocker, Store Worker II) | 11.20 |
| Store Worker I | 8.88 |
| Tools and Parts Attendant | 9.42 |

| | |
|---|-------|
| Warehouse Specialist | 9.42 |
| Mechanics and Maintenance and Repair Occupations | |
| Aircraft Mechanic | 16.22 |
| Aircraft Mechanic Helper | 12.42 |
| Aircraft Quality Control Inspector | 16.93 |
| Aircraft Servicer | 13.93 |
| Aircraft Worker | 14.73 |
| Appliance Mechanic | 15.48 |
| Bicycle Repairer | 12.77 |
| Cable Splicer | 16.22 |
| Carpenter, Maintenance | 15.48 |
| Carpet Layer | 14.73 |
| Electrician, Maintenance | 16.22 |
| Electronics Technician, Maintenance I | 15.08 |
| Electronics Technician, Maintenance II | 15.85 |
| Electronics Technician, Maintenance III | 16.59 |
| Fabric Worker | 13.93 |
| Fire Alarm System Mechanic | 16.22 |
| Fire Extinguisher Repairer | 13.22 |
| Fuel Distribution System Mechanic | 16.22 |
| General Maintenance Worker | 14.74 |
| Heating, Refrigeration and Air Conditioning Mechanic | 16.22 |
| Heavy Equipment Mechanic | 16.22 |
| Heavy Equipment Operator | 10.83 |
| Instrument Mechanic | 16.22 |
| Laborer | 7.05 |
| Locksmith | 15.48 |
| Machinery Maintenance Mechanic | 16.22 |
| Machinist, Maintenance | 16.22 |
| Maintenance Trades Helper | 12.42 |
| Millwright | 16.22 |
| Office Appliance Repairer | 15.48 |
| Painter, Aircraft | 15.48 |
| Painter, Maintenance | 15.48 |
| Pipefitter, Maintenance | 16.22 |
| Plumber, Maintenance | 15.48 |
| Pneudraulic Systems Mechanic | 16.22 |
| Rigger | 16.22 |
| Scale Mechanic | 14.74 |
| Sheet-Metal Worker, Maintenance | 16.22 |
| Small Engine Mechanic | 14.74 |
| Telecommunication Mechanic I | 16.22 |
| Telecommunication Mechanic II | 16.96 |
| Telephone Lineman | 16.22 |
| Welder, Combination, Maintenance | 16.22 |
| Well Driller | 16.22 |
| Woodcraft Worker | 16.22 |
| Woodworker | 13.22 |

Miscellaneous Occupations

| | |
|--|-------|
| Animal Caretaker | 8.37 |
| Carnival Equipment Operator | 8.88 |
| Carnival Equipment Repairer | 9.46 |
| Carnival Worker | 7.05 |
| Cashier | 7.06 |
| Desk Clerk | 8.66 |
| Embalmer | 16.57 |
| Lifeguard | 7.71 |
| Mortician | 16.57 |
| Park Attendant (Aide) | 9.69 |
| Photofinishing Worker (Photo Lab Tech., Darkroom Tech) | 7.71 |
| Recreation Specialist | 11.99 |
| Recycling Worker | 8.89 |
| Sales Clerk | 7.71 |
| School Crossing Guard (Crosswalk Attendant) | 7.05 |
| Sport Official | 7.71 |
| Survey Party Chief (Chief of Party) | 15.45 |
| Surveying Aide | 9.38 |
| Surveying Technician (Instr. Person/Surveyor Asst./Instr.) | 12.87 |
| Swimming Pool Operator | 10.55 |
| Vending Machine Attendant | 8.89 |
| Vending Machine Repairer | 10.55 |
| Vending Machine Repairer Helper | 8.89 |

Personal Needs Occupations

| | |
|-------------------------|-------|
| Child Care Attendant | 8.66 |
| Child Care Center Clerk | 10.78 |
| Chore Aid | 6.29 |
| Homemaker | 11.99 |

Plant and System Operation Occupations

| | |
|--------------------------------|-------|
| Boiler Tender | 16.22 |
| Sewage Plant Operator | 15.48 |
| Stationary Engineer | 16.22 |
| Ventilation Equipment Tender | 12.42 |
| Water Treatment Plant Operator | 15.48 |

Protective Service Occupations

| | |
|------------------------|-------|
| Alarm Monitor | 8.28 |
| Corrections Officer | 11.87 |
| Court Security Officer | 12.33 |
| Detention Officer | 11.87 |
| Firefighter | 11.86 |
| Guard I | 6.58 |
| Guard II | 8.28 |
| Police Officer | 14.75 |

Stevedoring/Longshoremen Occupations

| | |
|--------------------|-------|
| Blocker and Bracer | 11.17 |
| Hatch Tender | 11.17 |
| Line Handler | 11.17 |
| Stevedore I | 12.56 |
| Stevedore II | 13.93 |

Technical Occupations

| | |
|---|-------|
| Air Traffic Control Specialist, Center (2) | 26.07 |
| Air Traffic Control Specialist, Station (2) | 17.98 |
| Air Traffic Control Specialist, Terminal (2) | 19.75 |
| Archeological Technician I | 13.54 |
| Archeological Technician II | 15.14 |
| Archeological Technician III | 18.74 |
| Cartographic Technician | 18.74 |
| Civil Engineering Technician | 18.74 |
| Computer Based Training (CBT) Specialist/ Instructor | 17.05 |
| Drafter I | 10.25 |
| Drafter II | 11.50 |
| Drafter III | 15.13 |
| Drafter IV | 18.74 |
| Engineering Technician I | 10.26 |
| Engineering Technician II | 11.51 |
| Engineering Technician III | 14.15 |
| Engineering Technician IV | 16.94 |
| Engineering Technician V | 18.39 |
| Engineering Technician VI | 22.25 |
| Environmental Technician | 14.39 |
| Flight Simulator/Instructor (Pilot) | 20.62 |
| Graphic Artist | 17.05 |
| Instructor | 17.05 |
| Laboratory Technician | 12.94 |
| Mathematical Technician | 16.94 |
| Paralegal/Legal Assistant I | 11.87 |
| Paralegal/Legal Assistant II | 13.21 |
| Paralegal/Legal Assistant III | 16.11 |
| Paralegal/Legal Assistant IV | 19.55 |
| Photoptics Technician | 16.94 |
| Technical Writer | 20.16 |
| Unexploded (UXO) Safety Escort | 16.57 |
| Unexploded (UXO) Sweep Personnel | 16.57 |
| Unexploded Ordnance (UXO) Technician I | 16.57 |
| Unexploded Ordnance (UXO) Technician II | 20.05 |
| Unexploded Ordnance (UXO) Technician III | 24.02 |
| Weather Observer, Combined Upper Air and Surface Programs (3) | 12.94 |
| Weather Observer, Senior (3) | 14.39 |
| Weather Observer, Upper Air (3) | 12.94 |

Transportation/ Mobile Equipment Operation Occupations

| | |
|------------------------------|------|
| Bus Driver | 9.33 |
| Parking and Lot Attendant | 6.53 |
| Shuttle Bus Driver | 8.83 |
| Taxi Driver | 8.30 |
| Truckdriver, Heavy Truck | 9.84 |
| Truckdriver, Light Truck | 8.83 |
| Truckdriver, Medium Truck | 9.33 |
| Truckdriver, Tractor-Trailer | 9.84 |

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$1.92 an hour or \$76.80 a week or \$332.80 a month.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) **APPLICABLE TO AIR TRAFFIC CONTROLLERS ONLY - NIGHT DIFFERENTIAL:** An employee is entitled to pay for all work performed between the hours of 6:00 P.M. and 6:00 A.M. at the rate of basic pay plus a night pay differential amounting to 10 percent of the rate of basic pay.
- 3) **WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY:** If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard including working with or in close proximity to explosives and incendiary materials involved in research, testing, manufacturing, inspection, renovation, maintenance, and disposal. Such as: Screening, blending, dying, mixing, and pressing of sensitive explosives pyrotechnic compositions such as lead azide, black powder and photoflash power. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive explosives and incendiary materials. All operations involving regarding and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard. Including working with or in close proximity to explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and, possibly adjacent employees, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used.

All operations involving, unloading, storage, and hauling of explosive and incendiary ordnance material other

than small arms ammunition. (Distribution of raw nitroglycerine is covered under high degree hazard.)

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**** NOTES APPLYING TO THIS WAGE DETERMINATION ****

Source of Occupational Title and Descriptions:

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations," Fourth Edition, January 1993, as amended by the Third Supplement, dated March 1997, unless otherwise indicated. This publication may be obtained from the Superintendent of Documents, at 202-783-3238, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Copies of specific job descriptions may also be obtained from the appropriate contracting officer.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. (See Section 4.6 (C)(vi)) When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).

4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour decision to the contractor.

6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.